Docket No. _____

IN THE

Supreme Court of the United States

CHRISTOPHER CASTAGNA; GAVIN CASTAGNA
Petitioners,

v.

HARRY JEAN; KEITH KAPLAN; DARAN EDWARDS,
Respondents,

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED (Rule 14.1(a))

The Third and Seventh Circuits have held that the community caretaking exception established by *Cady v. Dombrowski*, 413 U.S. 433 (1973) does not apply to warrantless, unconsented to entries by police officers into private homes. The First Circuit held that the exception does apply to such entries. Was the First Circuit wrong?

Having so found, the First Circuit granted the officers qualified immunity upon finding that, as of March 17, 2013, it was not clearly established that the police officers' warrantless, unconsented-to entry into a private home to demand music be turned down and to check on suspected, but unconfirmed, underage drinkers fell outside the ambit of the community caretaking exception. Where the Fourth Amendment's heightened protections for the sanctity of the home have been clearly established for centuries, may the doctrine of qualified immunity be stretched so far as to condone such an objectively unreasonable intrusion? Should it?

I. PARTIES TO THE PROCEEDINGS BELOW

Petitioners are Christopher Castagna and Gavin Castagna. They were Plaintiffs in the District Court and Plaintiffs-Appellees in the Court of Appeals.

Respondents are Keith Kaplan, Harry Jean and Daran Edwards. They were defendants in the District Court and Defendants-Appellants in the Court of Appeals.

III. LIST OF ALL RELATED PROCEEDINGS (Rule 14.1(b)(iii))

Christopher Castagna and Gavin Castagna v. Daran Edwards, Anthony Troy, Jay Tully, Kamau Pritchard, Michael Bizzozero, Keith Kaplan and Harry Jean, No. 15-cv-14208-IT, U.S. District Court for the District of Massachusetts. Amended Judgment entered on June 28, 2019; Second Amended Judgment Entered May 1, 2020.

Christopher Castagna; Gavin Castagna v. Harry Jean; Keith Kaplan; Daran Edwards (Defendants/Appellants) and Jean Moise Acloque; Gary Barker; Michael Bizzozero; Terry Cotton; Richard Devoe; Jon-Michael Harber; Clifton Haynes; Gavin McHale; Kamau Pritchard; William Samaras; Stephen Smigliani; Anthony Troy; Jay Tully; Brendan Walsh; Donald Wightman; James Doe, Individually; John Doe 1; John Doe 2; John Doe; John Doe 3; John Doe 4; John Doe 5; John Doe 6; John Doe 7; John Doe 8; John Doe 9; John Doe 10; John Doe 11; John Doe 12 (Defendants), No. 19-1677, United States Court of Appeals for the First Circuit. Judgment entered on April 10, 2020.

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CHRISTOPHER CASTAGNA; GAVIN CASTAGNA
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VI. PETITION FOR WRIT OF CERTIORARI

Petitioners Christopher Castagna and Gavin Castagna respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit (hereinafter, the "First Circuit").

VII. OPINIONS BELOW

The opinion of the First Circuit is reported at *Castagna v. Jean*, 955 F. 3d 211 (1st Cir. 2020). App.[1] 1a-31a.

[1] "App." refers to the Appendix to the petition for a writ of certiorari.

The opinion of the United States District Court for the District of Massachusetts is reported as *Castagna v. Edwards*, 361 F. Supp. 3d 171 (D. Mass. 2019). App. 34a-53a.

VIII. JURISDICTION

On April 10, 2020, in an opinion and judgment, the First Circuit entered a judgment reversing the District Court's judgment for the Castagnas, and remanding the matter to the District Court to enter judgment for Respondents Keith Kaplan, Daran Edwards, and Harry Jean. App. 1a-31a; 32a-33a.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). The time for filing the within petition was extended to 150 days from the date of the District Court judgment via a COVID-19 order regarding filing deadlines issued by this Court on March 19, 2020.

IX. STATUTORY/CONSTITUTIONAL PROVISIONS INVOLVED

USCA Const. Amend. 4 provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

42 U.S.C. §1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's

> judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

X. STATEMENT

On March 17, 2013, the Castagnas held a St. Patrick's Day party at Christopher Castagna's apartment, located on the *first* floor of a building at an intersection in South Boston, Massachusetts. *Castagna*, 955 F. 3d at 214; App. 4a. "As one guest testified, St. Patrick's Day in Boston is basically 'a big party throughout the entire city.'" *Id.* Many of the attendees were intoxicated by early evening. *Id.*

Just before 6 p.m., an individual placed a 911 call about a loud party at the intersection. *See Castagna,* 955 F. 3d at 214; App. 4a. The 911 caller referred to people throwing bottles off a *second* floor porch. *Castagna,* 361 F. Supp. 3d at 175; App. 35a. More than ninety minutes later, Kaplan, Jean, Harry and four other City of Boston police officers responded. *Castagna*, 955 F. 3d at 214; App. 4a-5a.

Upon arrival, Kaplan heard music, talking and screaming from Christopher Castagna's first floor apartment. *Castagna*, 955 F. 3d at 214; *Castagna*, 361 F. Supp. 3d at 175; App. 5a, 35a-36a. According to Kaplan, two or three guests, who appeared to be underage, exited the apartment as Kaplan approached. *Castagna*, 955 F. 3d at 214; App. 5a. The exterior door to the apartment was open, and Kaplan observed people drinking in the apartment. *Id.* Edwards saw people, some of whom he thought to be underage, drinking, and he heard loud music. *Id.* at 214-215; App. 5a.

Arriving after the other officers, Jean also observed some drinkers, who appeared to him to be underage, in the apartment, and he heard music. *Castagna*, 955 F. 3d at 215; App. 6a. According to Jean, and *only* Jean, a young male stumbled outside from the open door of the apartment onto the sidewalk, vomited twice, and then stumbled back into the apartment. *Id.;* App. 38a.

The District Court found that, before entering the apartment, "none of the officers observed anything remarkable" occurring inside the apartment – Kaplan saw people dancing, and Edwards saw people speaking and drinking out of cups. *Castagna*, 361 F. Supp. 3d at 177; App. 38a.

While standing at the door of the apartment, Kaplan yelled "hello" several times, followed by "Boston Police." *Castagna*, 955 F. 3d at 215; App. 6a. When no one answered, Kaplan and the other officers entered the apartment without asking for permission. *Castagna,* 955 F. 3d at 215*;* App. 6a. At that time, the guests were having a dance competition. *Castagna,* 955 F. 3d at 215; App. 7a. Once the guests noticed the officers, the music was turned down[2], and the guests were cooperative. *Castagna*, 955 F. 3d at 215; *Castagna* 361 F. Supp. 3d at 175-176; App. 7a-8a, 34a, 38a.

[2] The First Circuit noted in a footnote that a guest had testified that she thought that the music was turned off and the officers testified that their practice was have the music turned down in response to noise complaints, but they were not asked at trial if the music was "turned off or merely down" when they first entered the apartment. *Castagna*, 955 F. 3d at 215, n. 2; App. 8a, n. 2. "We assume arguendo that the music was turned off." *Id.*

When they entered the apartment, the officers intended no arrests. *Castagna*, 955 F. 3d at 215; App. 6a. They entered to locate the homeowner, to have the music turned down, and ostensibly to check on the safety of any underage drinkers, including the person who had exited the apartment, vomited, and then returned inside. *Castagna*, 955 F. 3d at 215; App. 7a. Kaplan wanted to make sure everyone was safe, no underage drinkers were in the apartment, and no one was sick, yet he did not testify about ascertaining the ages of any attendees. *Id.* at 215, 222; *Castagna*, 361 F. Supp. 3d at 177; App. 23a, 38a. Jean characterized the entry into the apartment as a wellbeing check and as a part of "doing community caretaker work," and an opportunity to locate the owner because the party was spilling onto the sidewalk, yet he, too, never ascertained the age of any attendee nor searched for the young male whom he had seen vomit. *Id*. The District Court found the weight of the evidence did not support the "claim of a concern for the safety of underage party goers, let alone a need for emergency assistance." *Castagna*, 361 F. Supp. 3d at 177; App. 38a.

Once inside, Kaplan asked for the owners. *Castagna*, 955 F. 3d at 215; App. 8a. After a delay, the guests identified "Chris" and said he was not in the kitchen but in another area of the apartment. *Castagna*, 955 F. 3d at 215-216; App. 8a. While Kaplan and Edwards stayed in the kitchen, Jean and another officer went to look for Christopher Castagna. *Castagna*, 955 F. 3d at 216; App. 8a. *Castagna*, 361 F. Supp. 3d at 177; App. 36a, 38a; *see Castagna*, 955 F. 3d at 222, App. 23a. According to the

District Court, no officer testified he asked the guests for identification, or that anyone tried to run or hide. *Castagna*, 361 F. Supp. 3d at 177; App. 38a.

Jean or the officer with him said that he smelled drugs, and they knocked on what they believed was a bathroom door and waited. *Castagna*, 955 F. 3d at 216; App. 8a-9a. After hearing voices behind the door, Jean knocked again. *Castagna*, 955 F. 3d at 216*;* App. 9a. Once the bedroom door was opened, Christopher, for the first time, noticed the police officers in his apartment. *Id.*

Jean said "Boston Police" and observed Christopher had been drinking. *Id.* When Christopher noticed Jean had seen marijuana in the room, Christopher "pushed Jean, slammed the door on Jean's foot and held the door there." *Id.* Jean reopened the door and entered the room. *Id.* Eventually, several other officers entered the home, and the Castagnas and several guests were arrested. *Castagna*, 955 F. 3d at 216; App. 10a.

On December 22, 2015, the Castagnas filed a complaint in the District Court, which was later amended, alleging, among other things, various violations of 42 U.S.C. §1983. [ECF[3] Nos. 1, 108, 189]; J.A.[4] 45-72, 80-106, 107-132. The District Court had jurisdiction pursuant to 28 U.S.C. §1331. After a jury verdict in favor of the Defendants, the District Court granted the Castagnas' motion for new trial as to the Castagnas' Fourth Amendment unlawful entry claim. [ECF No. 284]; J.A. 38;

[3] "ECF" refers to the Electronic Case Files for the District Court case.

[4] Pursuant to Supreme Court Rule 12.7, Petitioners cite to the Joint Appendix, Vol. I of II, filed in the U.S. Court of Appeals for the First Circuit. "J.A." refers to said Joint Appendix.

App. 34a-53a. On June 28, 2019, the District Court entered an amended judgment in favor of the Castagnas, and against Kaplan, Edwards, and Jean, on the unlawful entry claim, awarding the Castagnas each a nominal damage of $1. [ECF. No. 325]; J.A. 44; App. 54a-56a. On July 2, 2019, Kaplan, Edwards and Jean filed a Notice of Appeal. [ECF No. 327]; J.A. 44.

The First Circuit had jurisdiction over the matter pursuant to 28 U.S.C. §1291. In accordance with its determination only weeks earlier that the community caretaking exception applies to warrantless entries into the home, *see Caniglia v. Strom*, 953 F. 3d 112 (1st Cir. 2020), the First Circuit held that qualified immunity protected Edwards, Jean and Kaplan on the §1983 unlawful entry claims, where (1) under the community caretaking exception, officers were permitted to enter the private home, without a warrant and without consent, through the open door of the apartment in order to "have the music turned down and make sure that any of the underage guests were safe," and (2) the officers acted reasonably[5]. *Castagna*, 955 F. 3d at 221; App. 21a.

XI. REASONS FOR GRANTING THE WRIT

This case presents a recurring question which has divided the courts of appeals – whether the community caretaking exception (hereinafter "CCE") to the warrant requirement, established almost fifty years ago in *Cady v. Dombrowski*, 413 U.S. 433, 447-448 (1973), eclipses the Fourth Amendment's heightened protection in the home.

[5] The First Circuit did not reach the question of whether the officers are entitled to qualified immunity under the emergency aid exception to the warrant requirement. *Castagna*, 955 F. 3d at 218, n. 8; App. 15a n. 8.

In *Cady*, this Court held that police officers performing community caretaking functions as to automobiles do not violate the Fourth Amendment. *Id.* Since then, some circuit courts, applying *Cady*, have refused to extend the CCE to homes, *see e.g. United States v. Pichany*, 687 F. 2d 204, 209 (7th Cir. 1982), while others, like the First Circuit in the case at bar, have misused *Cady* in a manner which erodes the Fourth Amendment's clearly-established and jealously-guarded protections of the home. When the courts of appeals extend the CCE to the home, or grant qualified immunity to warrantless entries into the home, they embolden the police to ignore the constitutional constraints protecting the sanctity of the home. Through this petition, the Castagnas ask this Court to provide much-needed guidance to the circuits and to litigants regarding the intersection between the Fourth Amendment, the CCE and the front door to one's home.

In this case, the First Circuit found that mere loud music and concern about suspected but never confirmed underage drinkers may serve as a basis for warrantless entry into a private home under the CCE. *See Castagna*, 361 F. Supp. 2d at 180; App. 43a. Given the uncertain times in which we live, where people are protesting against unchecked police authority, and where Covid-19 has forced many Americans to isolate themselves in their homes, the need to maintain the sanctity and protection of the home against any unreasonable use of power by police is paramount. This case presents the opportunity for this Court to reaffirm that the CCE does not apply to homes, or, at the very least, to find that the officers' conduct

here did not reasonably fall within the ambit of the CCE, and that qualified immunity does not apply.

1. In the early 17th century, the King's Bench asserted that "the house of every one is to him [or her] as his [or her] castle and fortress, as well for his [or her] defence against injury and violence, as for his [or her] repose." *Wilson v. Layne*, 526 U.S. 603, 609-610 (1999), *quoting Semayne's Case*, 77 Eng. Rep. 194, 5 Co. Rep. 91a, 91b, 195 (K. B.)(1604). Over time, these concepts have developed into a "more general assurance of personal security in one's home, an assurance which has become part of our constitutional tradition." *Minnesota v. Carter*, 525 U.S. 83, 100 (1998) (Scalia, J. and Thomas, J., concurring); *Wilson*, 526 U.S. at 610. The heightened protection against unreasonable government intrusion in the home is embedded in the express language of the Fourth Amendment: "The right of the people to be secure in their … houses … shall not be violated." *Payton v. New York*, 445 U.S. 573, 589 (1980); U.S. Const. Amend. IV. For officers to "thrust themselves into a home" is of "grave concern" to a "society which chooses to dwell in reasonable security and freedom from surveillance." *Johnson v. United States*, 333 U.S. 10, 14 (1948). The celebration of holidays, like St. Patrick's Day, Thanksgiving, Christmas or Passover with friends and family in the security of a private home is a well-ingrained, integral part of American life.

In contrast to the home, an individual enjoys a lesser expectation of privacy in an automobile because the main purpose of an automobile is transportation, not generally residential use or storage of personal property. *South Dakota v. Opperman*,

428 U.S. 364, 368 (1976). The automobile, unlike a home, "travels through public thoroughfares where both its occupants and its contents are in plain view." *Cardwell v. Lewis*, 417 U.S. 583, 590 (1974). In 1973, acknowledging this lesser expectation of privacy, this Court first recognized the CCE for searches of automobiles. *Cady*, 413 U.S. at 447-448. This Court opined police are more likely to have contact with individuals in matters involving the automobile than those involving the home because of the frequency of disabled vehicles, collisions on the roads and, presumably, motor vehicle stops. *See id*. at 441. The "constitutional difference" between searches of homes and searches of automobiles arises out of the mobility of the automobile and the frequency in which non-criminal contact between police and automobiles will lead to evidence of a crime. *Id.* at 442. Police officers often "investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Id*. at 441. As a result, this Court held the officer's warrantless search of a trunk of an automobile, after an arrest, while searching for a firearm (which could have been stolen if left in the trunk) was not unreasonable under the Fourth Amendment or the Fourteenth Amendment. *Cady,* 413 U.S. at 448.

Over the past forty-plus years, the circuit courts have taken a somewhat uneven approach to applying *Cady*, resulting, in general, in three differing approaches to the CCE. The Third and Seventh Circuits, in direct conflict with the First Circuit, have refused to apply the CCE to an officer's entry into a home. *See*

Ray v. Township of Warren, 626 F. 3d 170, 177 (3rd Cir. 2010) ("The community caretaking exception cannot be used to justify warrantless searches of a home.")[6]; *see e.g. Pichany*, 687 F. 2d at 209 (holding in Seventh Circuit that no CCE where, while looking for owner of warehouse to discuss burglary, officers entered another warehouse and found stolen tractors; "The Court [in *Cady*] intended to confine the holding to the automobile exception and to foreclose an expansive construction of the decision allowing warrantless searches of private homes or businesses."); *Sutterfield v. City of Milwaukee*, 751 F. 3d 542, 556 (7th Cir. 2014) (finding no CCE applied where officers entered home of person apparently experiencing mental health issues, and, while there, opened locked container and seized gun).

The Second, Fourth, D.C., Tenth and Eleventh Circuits, while not expressly confining the CCE to automobiles, have not extended the scope of the CCE to residential property. *See United States v. McGough*, 412 F. 3d 1232, 1239 (11th Cir. 2005) (holding CCE did not apply where officer brought child into home to retrieve child's shoes after father arrested, and, once inside, saw gun and marijuana)[7]; *Corrigan v. District of Columbia*, 841 F. 3d 1022 (D.C. Cir. 2016) (holding that, even

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[6] In the more recent *Vargas v. City of Philadelphia*, 783 F. 3d 962, 971-972 (3rd Cir. 2015), the Third Circuit held that "the community caretaking doctrine can apply in situations when, as is arguably the case here, a person outside of a home has been seized for a non-investigatory purpose and to protect that individual or the community at large." V*argas*, however, involved the removal of a girl who was dealing with a medical emergency from an automobile. *Id.*

[7] In *McGough*, the Court assumed arguendo that that the CCE could apply to homes. *Id.* at 1239. The Court went on to conclude, though, that "[w]ere we to apply the community caretaking exception to the Fourth Amendment in this case, we would undermine the Amendment's most fundamental premise: searches inside the home, without a warrant, are presumptively unreasonable," citing *Payton*. *Id.*

if CCE did apply to home, officers' presence outside home for many hours meant they had time to obtain warrant); *see Hunsberger v. Wood*, 570 F. 3d 546, 554 (4th Cir. 2009) (finding that, where CCE issue was not sufficiently raised, it was unclear whether CCE would apply to entry into home); *Harris v. O'Hare*, 770 F. 3d 224, 228, 239, n. 10 (2d Cir. 2014) (holding CCE did not apply to warrantless entry into fenced-in area around private home in order to search for guns); *see McEvoy v. Matthews*, No. 3:16-cv-922 (JAM), 2017 U.S. Dist. LEXIS 133487, at *9 (D. Conn Aug. 21, 2017) (noting Second Circuit has not yet taken sides on whether CCE applies to searches by police of homes). In the Tenth Circuit, while *United States v. Bute*, 43 F. 3d 531, 535 (10th Cir. 1994) limited searches under the CCE to automobiles, other Tenth Circuit cases have expanded the scope of searches under the CCE beyond automobiles but only to locations outside of the home. *See e.g. United States v. Garner*, 416 F. 3d 1208, 1214 (10th Cir. 2005) (finding CCE applied to officer who directed Garner, while outside, to return to officer so that fire department personnel could perform medical examination); *United States v. Gilmore*, 776 F. 3d 765, 769, 772 (10th Cir. 2015) (holding CCE applied to intoxicated, unresponsive person located in parking lot).

The Fifth, Sixth, Eighth, Ninth, and, most recently, the First, Circuits have extended the CCE to include searches of the home. *United States v. York*, 895 F. 2d 1026, 1029 (5th Cir. 1990) (finding officer could enter home to assist person staying there where homeowner was intoxicated and making threats); *Graham v. Barnett*, No. 19-2512, 2020 U.S. App. LEXIS 25969, at *17-18 (8th Cir. Aug. 17, 2020) (holding officers could briefly detain person with potential mental health issues in home for

her safety and the safety of others under CCE if officer "reasonably believes that an emergency exists."); *United States v. Smith*, 820 F. 3d 356, 360-62 (8th Cir. 2016) (finding officers could enter home under CCE after receiving call from individual concerned about another's safety and giving reasons as to why person may be being held against her will); *Rodriguez v. City of San Jos*e, 930 F. 3d 1123, 1137-1141 (9th Cir. 2019), *petition for cert. filed*, No. 19-1057 (U.S. Feb. 25, 2020) (holding CCE extended on limited basis to encompass situation where officers made warrantless seizure of firearms at home of individual with mental health issue because of potential serious public safety threat). In *United States v. Rohrig*, 98 F. 3d 1506, 1509, 1522 (6th Cir. 1996), the Sixth Circuit found the Fourth Amendment permitted police officers to enter a home, through an open door into an empty kitchen, where loud music was continuously playing after 1:30 a.m. in a residential neighborhood – music that continued to play after the officers entered the home until they turned it down themselves (unlike in the case at bar). That decision, expressly limited to its facts, did not create a "broad 'nuisance abatement' exception to the general rule that warrantless entries into private homes are presumptively unreasonable." *Id.* at 1522, 1525, n. 11[8].

[8] In *United States v. Williams,* 354 F. 3d 497, 507, 508 (6th Cir. 2003), the Sixth Circuit refused to follow *Rohrig*, voicing doubt that "community caretaking will generally justify warrantless entries into private homes." *See also United States v. Gordon*, 339 F. Supp. 3d 647, 667 (E.D. Mich. 2018) (*Rohrig* was grounded upon "an expanded exigent circumstances test, not the community caretaking exception that allows the warrantless entry into a home."); *but see Sutterfield*, 751 F. 3d at 556.

In *Caniglia v. Strom*, 953 F. 3d 112, 123-124 (1st Cir. 2020), decided less than a month before the First Circuit issued its opinion in this case, the First Circuit weighed in on the circuit split. The First Circuit, acknowledging that it had previously applied the CCE only to searches of automobiles, unmoored itself from the constitutional constraints of *Cady*. *Id.* In broadening the scope of the CCE to include homes, the First Circuit cited to the "practical realities of policing" and that the CCE is "designed to give police elbow room to take appropriate action when unforeseen circumstances present some transient hazard that requires immediate attention." *Id.* at 124. In *Caniglia*, a case similar in facts, but not outcome, to *Sutterfield*, *supra*, the First Circuit found the seizure of a man who, on the previous evening, had engaged in an argument with his wife, and, at one point, had produced a gun and asked her to shoot him, fell within the scope of the CCE, especially where the wife was expressing urgent concerns about her husband. *Caniglia,* 953 F. 3d at 127, 129. The First Circuit also found the seizure of the firearms in the home fell within the scope of the CCE because of the possibility that the husband, while in a troubled state, could return to a home where firearms were kept. *Id.* at 132. "[N]o reasonable factfinder would 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." *Id.* at 133.

On the heels of *Caniglia*, the First Circuit again applied the CCE to the warrantless entry into a home in this case – even though here there was neither

any emergency nor urgency. *Castagna*, 955 F. 3d at 220; App. 19a-20a. Here, the occupants of the apartment did not summon the police to the home because of a dangerous situation, unlike in *Caniglia*. *Caniglia*, 953 F. 3d at 122 (wife summoned police). Focusing upon the officers' wishes to have the music turned down and to check on the welfare of potentially underage drinkers, the First Circuit found the actions of the police fell within the heartland of the CCE, as "they were aiding people who were potentially in distress, preventing hazards from materializing, and protecting community safety." *Castagna*, 955 F. 3d at 221; App. 20a-21a. Leaving aside issues relating to the wrongful extension of the CCE to searches of homes, that language, "potentially in distress" and "preventing hazards from materializing" further diminishes the protections of the Fourth Amendment, as it enables officers to make a warrantless entry into a home based upon a mere unsubstantiated hunch, instead of a reasonable basis.

In determining whether the officers acted reasonably, the Court performed a balancing test, balancing the need for the caretaking activity against the Castagnas' right to be free from government intrusion. *Castagna,* 955 F. 3d at 221; App. 21a. The First Circuit held "[i]t was objectively reasonable for an officer to have on-going concerns about noise complaints and underage drinking and determine that they might be easily resolved by entering through an open door (the same one the guests were coming and going through freely) to bring these complaints to the owner's attention." *Castagna*, 955 F. 3d at 221; App. 22a. But, there was only one noise complaint which related to a second floor apartment, not to the Castagna first floor

apartment, and the officers never confirmed any underage drinking. *See Castagna*, 361 F. Supp. 3d at 175; App. 35a. The notion that an officer's concerns may have been "easily resolved" by entering a private home does not, without more, permit the trampling of Fourth Amendment protections. In *Kirk v. Louisiana*, 536 U.S. 635, 637-638 (2002), this Court, citing *Payton*, wrote:

> the reasons for upholding warrantless arrests in a public place do not apply to warrantless invasions of the privacy of the home. [*Payton*, 445 U.S. at 576] …. "[B]ecause 'the Fourth Amendment has drawn a firm line at the entrance to the house … [, a]bsent exigent circumstances, that threshold may not reasonably be crossed without a warrant.' *Id.*, at 590.

The First Circuit's holding diverges from this Court's precedents in *Cady*, *Payton* and *Kirk*, and thereby creates a situation where the "firm line" is weakened, and where police may more easily justify their warrantless invasion of a home under the CCE than under the exigent circumstances exception.

There is a sharp divide of authority among the courts of appeals and an uncertainty among the circuits when grappling with how and when to apply the CCE. Although *Cady*'s express language limited its scope to searches of automobiles, many circuits have widened the CCE to seizures in homes. Federal constitutional rights need uniform application, however, and, presently, an individual in the Seventh Circuit enjoys greater Fourth Amendment protections in her home than does one in the First Circuit. A person's home should remain her castle. Through this petition, the Castagnas seek guidance from this Court as to the scope of the CCE, and, further, to reaffirm the heightened protection that individuals deserve and constitutionally enjoy in the privacy of their own homes to be free from unreasonable intrusions.

2. Additionally, this Court should grant certiorari to clarify that, absent some valid reasonable basis, an officer cannot rely upon the community caretaking exception to justify warrantless intrusions into homes simply to quell parties or to look for underage people and to see if they are drinking alcohol or need medical attention. Under *Kirk*, 536 U.S. at 638, police cannot enter a home where drugs are being sold despite their fear that evidence would be destroyed. Yet, under CCE, courts hold that officers can make a warrantless entry into a home for non-criminal, non-exigent circumstances.

In *Caniglia*, when performing the balancing test to assess the reasonableness of the officers' actions, the First Circuit found that the community had a strong interest in responding quickly to "mentally ill and imminently dangerous" persons with access to firearms, especially since delay may lead to injury or death. *Caniglia*, 953 F. 3d at 125*; see also Rodriguez*, 930 F. 3d 1123, 1137-41. On the other hand, the husband had "robust interests" in his person, the sanctity of the home, and his right to keep a firearm in the home. *Caniglia*, 953 F. 3d at 125. The theme that emerges from *Caniglia*, and from other cases in which *Cady* was applied outside of the scope of an automobile, is a sense that imminent danger or fear that someone may become, or is, injured often provides sufficient justification for infringing upon the sanctity of the home under the CCE. *See e.g. York*, 895 F. 2d at 1029; *Smith*, 820 F. 3d at 360-62. The First Circuit rejected this argument, noting that, in *Caniglia*, the "serious risk of harm was balanced against incursions on the individual's personal freedoms." *Castagna*, 955 F. 3d at 221, n. 11; App. 22a, n. 11. The First Circuit wrote that

"[p]olice officers perform a variety of functions when in their community caretaking role, not all of which must implicate a risk of imminent harm." *Id; but see Corrigan,* 841 F. 3d at 1034 (noting that cases applying CCE have been situations where officers required immediate action to fulfill caretaking responsibilities); *Graham v. Barnett*, 2020 U.S. App. LEXIS 25969, at *17-18.

The Castagnas, like Caniglia, had a robust interest in the sanctity of their home. While the Castagnas consented to the guests entering the apartment, they never consented to the officers' entry. In *Florida v. Jardines*, 569 U.S. 1, 8, (2013), cited by the First Circuit, *Castagna*, 955 F. 3d at 221; App. 21a, this Court found police officers had the implied authority to knock on the door from the porch of a home, but to do no more. Here, the officers announced themselves and then entered without obtaining the permission of anyone inside. *Id*. The open door was not an invitation for officers to enter. *See McClish v. Nugent*, 483 F. 3d 1231, 1241 (11th Cir. 2007). The officers, while standing outside, did not observe any "chaos, tumult or ongoing illegal activities" in the home which may have justified a warrantless entry. *See Strutz v. Hall*, 308 F. Supp. 2d 767, 780 (E.D. Mich. 2004) (holding, where nothing suggested need for officers to act quickly, officers could not make warrantless entry into home to check for alleged underage drinkers under CCE).

There was no immediate danger or transient hazard[9]. *See Castagna*, 955 F.3d at 221, n. 11, App. *Castagna*, 361 F. Supp. 3d at 177; App. 22a, n.11, 36a. The

[9] The Defendants in *Caniglia* did not raise the emergency aid or exigent circumstances exceptions. *Id.* at 122. In this case, the First Circuit did not reach the

officers never alleged that, before they entered, there was any fighting in the home, or concern that minors would flee or destroy evidence when the officers entered the home or evidence of injury to someone observed by them before they entered the home. *Cf. Brigham City v. Stuart*, 547 U.S. 398, 406 (2006) (holding officers could enter home under emergency aid exception where they observed fight in home). The government interest in checking on the wellbeing of potential underage drinkers does not rise to the level of a sufficiently compelling situation in order to justify a warrantless entry into a home. *See McGough*, 412 F. 3d at 1238. The officers did not testify to checking identifications of the guests, and Jean, who saw the vomiting person, went to look for the homeowner, not for the vomiting person – something which the District Court found telling in concluding that the officers were not concerned about underage drinkers. *Castagna*, 361 F. Supp. 3d at 177; App. 38a. The First Circuit dismissed those facts as demonstrating the subjective state of mind of the officers, as opposed to the proper objective analysis of the situation. *Castagna*, 955 F. 3d at 222; App. 23a. Nonetheless, the officers' actions once in the home shed light on the degree to which an objectively reasonable police officer, viewing the same circumstances, would have been concerned about the safety of potential underage drinkers.

While, as the First Circuit wrote, "people who are below the legal drinking age and apparently sick from alcohol are an objective safety risk," the circumstances

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Defendants' arguments that the emergency aid exception applied. *Castagna*, 955 F. 3d at 218, n. 8; App. 15a, n. 8.

faced by the officers confirm that there were insufficient facts to make that risk, here, a genuine concern. *Castagna*, 955 F. 3d at 222; App. 23a. Only one person vomited and it is unknown whether that person ingested alcohol, and, if so, whether alcohol induced his vomiting. There is no evidence that the 911 caller mentioned underage drinkers, or that anyone in the home required medical assistance. *Cf. Michigan v. Fisher*, 558 U.S. 45, 47, 49 (2009) (emergency aid exception test is whether there was "an objectively reasonable basis for believing" that medical assistance was needed, or persons were in danger). Alcohol is not so inherently dangerous that minors who may have consumed alcohol require immediate medical treatment. *Strutz*, 308 F. Supp. 2d at 779. Merely suspecting that people are drinking alcohol, and that some of them may be underage, is not enough to justify the entry into a home without a warrant – if it were, officers then always would possess a ready excuse to walk into any home where people in their twenties are having a party, for some of the attendees may appear to be underage. Even if there had been underage drinkers (and, to be clear, none were identified) "the Fourth Amendment applies to police home entries to stop teenage drinking parties…." *Howes v. Hitchcock*, 66 F. Supp. 2d. 203, 215 (D. Mass. Sept. 9, 1999). A reasonable officer in the shoes of Kaplan, Jean and Edwards, facing a situation which was apparently neither serious enough to check identifications nor to seek out the vomiting guest, would have known that there existed no basis for their warrantless entry into the home.

Once the concern for the alleged underage drinkers is excised as a justification for entering the apartment, the officers are left with the need to enter the home in order to have the music lowered, which, on its own, presents an insufficient reason to abridge the Fourth Amendment's heightened protections in the home. The *Rohrig* case, which upheld the officers' entry into a home to have music turned down, affords the officers no safe harbor. The entry into the home in *Rohrig,* a case which has been questioned in its own Circuit, *see Williams,* 354 F. 3d at 507, 508, took place at 1:30 a.m., when most people are sleeping; here, it was early evening on St. Patrick's Day in South Boston, hardly a time and place when neighbors would expect quiet. *Castagna*, 955 F. 3d at 214, 221; App. 4a, 22a. In *Rohrig*, the music had been playing for a long time; here, the 911 call had been made approximately ninety minutes earlier for a different residence. There is no evidence that loud music had emanated from the Castagna apartment for a long time; there were no irate neighbors standing outside of the apartment in their pajamas, complaining about ongoing noise, as there were in *Rohrig*. *Rohrig*, 98 F. 3d at 1509, 1521. The music was turned down when the officers entered. *Castagna*, 955 F. 3d at 215; App. 7a-8a. This minimal excuse for a warrantless entry (to have music turned down) takes us far afield from the safety concerns contemplated in *Cady*, and emphasizes the need for direction from this Court on the scope of the CCE. There was no "parade of horribles" that could be imagined if the officers had simply "directed the guests to keep the music down or had waited outside for the guests to bring the owner to the door," or had sought to obtain a warrant. *See Castagna*, 361 F. Supp. 3d at 180; App. 43a; *MacDonald v.*

Town of Eastham, 745 F. 3d 8, 14 (1st Cir. 2014). An objectively reasonable officer would have recognized the Castagnas' right to the heightened protection in the home, and that police entry into a home in order to have noise turned down at a party "was well beyond the safety or emergency aid function that would arguably fall within any community caretaking exception." *Castagna*, 361 F. Supp. 3d at 180; App. 44a; *see Welch v. Wisconsin*, 466 U.S. 740, 753 (1984) (police could not make warrantless arrest in home for extremely minor offense).

3. Under the doctrine of qualified immunity, police officers are immune from liability if an officer's conduct does not infringe upon the clearly established statutory or constitutional rights of which a reasonable officer would have been aware. *Kisela v. Hughes*, ___ U.S. ___, 138 S. Ct. 1148, 1152-1153 (2018). The borders of the right must be clear to a reasonable official. *White v. Pauly*, 580 U.S. ___, __, 137 S. Ct. 548, 551 (2017). Essentially, courts examine whether there is a violation of federal statutory or constitutional rights, and whether the wrongful conduct was clearly established at the time. *Castagna*, 955 F. 3d at 219; App. 16a.

For a right to be clearly established, there does not have to be a case directly on point, but the question must be "beyond debate" based upon existing precedent. *White,* 580 U.S. at ___, 137 S. Ct. at 551. This Court has instructed Courts "not to define clearly established law at a high level of generality." *City and County of San Francisco v. Sheehan*, 575 U.S. 600, ___, 135 S. Ct. 1765, 1775-1776 (2015). Then again, "general statements of the law are not inherently incapable of giving fair and clear warning to officers." *White*, 580 U.S. at ___, 137 S. Ct. at 551. Qualified

immunity is intended to weed out cases against "all but the plainly incompetent or those who knowingly violate the law." *Id.* Here, the First Circuit applied the doctrine to the Castagnas' claims, finding that the officers' entry into the home fell within the rubric of the CCE, and, further, that it was not clearly established as of March 17, 2013 that the CCE would not apply to the circumstances of this case. *Castagna*, 955 F. 3d at 220, 222; App. 18a, 24a. The First Circuit has thereby disregarded this Court's precedents concerning the sanctity of a home.

This Court has long held, and continuously reaffirmed, that "physical entry of the home is the chief evil against which the Fourth Amendment is directed." *Payton*, 445 U.S. at 585-586, *quoting United States v. United States District Court*, 407 U.S. 297, 313 (1972). Long before 2013, this Court left it "beyond debate" that any warrantless entry into a home is unreasonable, with a few "jealously and carefully drawn" exceptions. *Georgia v. Randolph,* 547 U.S. 103, 109 (2006); *see Payton*, 445 U.S. at 590; *Kirk*, 536 U.S. at 637-638; *Brigham City*, 547 U.S. at 403. In *Cady*, 413 U.S. at 441, this Court recognized a limited exception to the warrant requirement – the CCE – applied exclusively to searches of automobiles because of, among other things, their transient nature. While some circuit courts have drifted away from that limitation, employing, at times, a modified exigent circumstances test, instead of community caretaking principles, *see e.g. Gordon*, 339 F. Supp. 3d 647, 667 (E.D. Mich. 2018); *Ray*, 626 F. 3d at 176, this Court has applied the CCE only to automobiles. *Opperman*, 428 U.S. at 375. It was clearly established in 2013, then, that warrantless entries into the home are not permitted, absent certain limited

exceptions, and the one exception that the officers raised here does not apply to homes. As a result, qualified immunity is inapplicable in the case at bar.

4. Assuming *arguendo*, without conceding, that it was unclear whether the CCE applied to searches of the home as of 2013, it was still clearly established, as of that date, that officers could not rely upon that exception to justify a warrantless entry into the home in order to have music turned down or to check on the welfare of potential underage drinkers. Within the heartland of the CCE, officers 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 community safety." *United States v. Rodriguez-Morales*, 929 F. 2d 780, 784-85 (1st Cir. 1991) (holding officers detaining occupants of automobile could impound automobile in order to prevent vandalism). Before *Caniglia*, the First Circuit had written about the lack of direct controlling authority about the scope of the CCE, and that there was a "sea of confusing case law." *MacDonald,* 745 F. 3d at 14. In *MacDonald*, 745 F. 3d at 10, 11, 14, 15, which involved a 2009 incident, the First Circuit found that, while the law on CCE was unclear, qualified immunity protected officers who, in response to a neighbor's concern for the homeowner's wellbeing, entered a home with an open door after there was no response to the officers' announcement of their presence. That lack of apparent clarity, however, did not mean that "every attempt to resort to the exception must be regarded as" arguably within the scope of the community caretaking exception. *Matalon v. Hynnes*, 806 F.

3d 627, 634-635 (1st Cir. 2015) (officers could not enter home under CCE in order to look for suspect).

Here, the two reasons proffered by the Defendants are individually and collectively insufficient to justify the officers' warrantless entry under the CCE. There were no actual or transient hazards to combat, no people needing aid, and no potential hazards to prevent. *See Rodriguez-Morales*, 929 F. 2d at 784-785. This was not a situation where there was an ongoing safety concern – like a disabled automobile presenting a hazard in the road. *See Lockhart-Bembery v. Sauro*, 498 F. 3d 69, 76 (1st Cir. 2007) (holding officer could order operator of disabled vehicle to move automobile because of safety hazard); *compare United States v. Cervantes*, 703 F. 3d 1135, 1141-1142 (9th Cir. 2012) (holding no CCE where vehicle left in safe location and did not pose safety hazard). Since the 911 call related to a different apartment, the evidence regarding loud music began, at the earliest, at the time of the Defendants' approach to the home. The music was turned down upon Defendants' entrance into in the home. The party was taking place early in the evening on a holiday well known for drinking and parties. No evidence established the music was either playing late at night or "a continuing and noxious disturbance for an extended period of time without serving any apparent purpose," or that any civilian was bothered by the music. C.f. *Rohrig*, 98 F. 3d at 1522. Based upon precedent available in 2013, any reasonable officer in the shoes of the Defendants would have known that their warrantless entry into the apartment to have the music turned down would violate the Fourth Amendment and would not fall within the scope of the CCE.

The Castagnas' heightened privacy rights in the home were also not outweighed by the unverified suspicion of alleged underage drinkers, or the alleged concern for a person who vomited. In *Hunsberger*, 570 F. 3d at 554, where officers made a warrantless entry into a home in which teenagers were apparently drinking, the Fourth Circuit, while not reaching the CCE issue, wrote that CCE "is in no sense an open-ended grant of discretion that will justify a warrantless search whenever an officer can point to some interest unrelated to the detection of crime." *See McGough*, 412 F. 3d at 1239; *Pichany*, 687 F. 2d at 209. There is no evidence of the 911 caller referring to any underage drinkers or referring to anyone potentially requiring medical assistance. The police had no confirmation that any of the attendees were underage. *See e.g. Howes*, 66 F. Supp. 2d at 207. The individual who vomited and then returned to the party was neither alone in the home nor potentially in medical distress, as several people in the home could have provided aid, if necessary. *Cf. MacDonald,* 745 F. 3d at 14. This case does not present a situation where officers must "make on-the-spot judgments in harrowing and swiftly evolving circumstances," thereby "affording the police some reasonable leeway in the performance of their community caretaking responsibilities." *Caniglia*, 953 F. 3d at 133; *see e.g. York*, 895 F. 2d at 1029; *Gilmore*, 776 F. 3d at 772 (concerning January, 2013 incident). The police did not observe fighting in the home – they saw a dance competition. *See Castagna*, 955 F. 3d at 215; App. 7a. There was no evidence that the officers rushed into the home because of concern about anyone inside - they announced themselves while outside of the door, and then "we kind of walked in." *Castagna*, 955 F. 3d at

215; App. 6a. Upon entering the home, the Defendants took no steps consistent with having any concern for underage drinkers or for the person who vomited. A reasonable officer, knowing of the heightened protections in the home as of 2013, would have known that entering the Castagna home under these circumstances clearly violated the Fourth Amendment and did not fall within the CCE.

As a result of the First Circuit's decisions in *Caniglia* and in the case at bar, individuals no longer enjoy heightened security that the Fourth Amendment provides to the home. An individual's expectation of privacy in the home is reduced to the lower level that applies to automobiles. This reduction imperils, and potentially eviscerates, the sanctity of the home, where now, in the purported name of safety or non-criminal investigation, any officer may enter any home without a warrant in order to require that music be turned down or to check on the wellbeing of people who may merely look underage and are drinking from cups that the officer sees through a window. How far will this exception go? Castagnas seek guidance from this Court to limit the scope and effect of the CCE so that the heightened protections of the Fourth Amendment may be restored to its inviolable status in the hierarchy of Fourth Amendment protections.

As the District Court wrote:

> Here, an objectively reasonable officer in Defendants' position would have known of Plaintiffs' right to enjoy the sanctity of their home, and, moreover, that the function sought to be performed by the police – having the noise turned down at a party – was well beyond the safety or emergency aid function that would arguably fall within the community caretaking exception. Finding otherwise, as another judge in this district has noted, "would be a betrayal of the bedrock principal at the foundation of the Fourth Amendment protection of the home. *Hutchins*

v. McKay, 285 F. Supp. 3d 420, 427 (D. Mass. 2018) (rejecting the officers' qualified immunity argument)".

Castagna, 361 F. Supp. 3d at 180; 44a.

XII. CONCLUSION

For the reasons above, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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Dated: August 27, 2020

APPENDIX A

United States Court of Appeals
For the First Circuit

No. 19-1677

CHRISTOPHER CASTAGNA; GAVIN CASTAGNA,

Plaintiffs, Appellees,

v.

HARRY JEAN; KEITH KAPLAN; DARAN EDWARDS,

Defendants, Appellants.

JEAN MOISE ACLOQUE; GARY BARKER; MICHAEL BIZZOZERO; TERRY COTTON; RICHARD DEVOE; JON-MICHAEL HARBER; CLIFTON HAYNES; GAVIN MCHALE; KAMAU PRITCHARD; WILLIAM SAMARAS; STEPHEN SMIGLIANI; ANTHONY TROY; JAY TULLY; BRENDAN WALSH; DONALD WIGHTMAN; JAMES DOE, Individually; JOHN DOE 1; JOHN DOE 2; JOHN DOE 3; JOHN DOE 4; JOHN DOE 5; JOHN DOE 6; JOHN DOE 7; JOHN DOE 8; JOHN DOE 9; JOHN DOE 10; JOHN DOE 11; JOHN DOE 12,

Defendants.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Indira Talwani, U.S. District Judge]

Before

Lynch, Stahl, and Kayatta,
Circuit Judges.

Nicole M. O'Connor, Senior Assistant Corporation Counsel, City of Boston Law Department, with whom Eugene L. O'Flaherty, Corporation Counsel, City of Boston Law Department, and Matthew M. McGarry, Assistant Corporation Counsel, City of Boston Law Department, were on brief, for appellants.

Paul J. Klehm, with whom Benjamin L. Falkner and Krasnoo, Klehm & Falkner LLP were on brief, for appellees.

April 10, 2020

LYNCH, **Circuit Judge**. This appeal raises the issue of whether the three defendant Boston police officers were entitled to qualified immunity for entering through the open door of a house under the community caretaking exception to the Fourth Amendment's warrant requirement. We hold that the officers are entitled to qualified immunity under these circumstances. We reverse the judgment for the plaintiffs and remand for the district court to enter judgment for the defendants.

I.

Qualified immunity is "an immunity from suit rather than a mere defense to liability." Mitchell v. Forsyth, 472 U.S. 511, 526 (1985) (emphasis omitted). As such, a typical § 1983 defendant raises the qualified immunity defense in a motion to dismiss or motion for summary judgment. Wilson v. City of Boston, 421 F.3d 45, 52 (1st Cir. 2005). The officers in this case did not raise their specific qualified immunity defense until they filed a motion for judgment as a matter of law at the end of the jury trial, to which the jury ruled for the officers. But this case's "unusual posture does not affect the viability of the qualified immunity defense." Id. at 53.

"[W]hen a qualified immunity defense is pressed after a jury verdict, the evidence must be construed in the light most hospitable to the party that prevailed at trial." Id. (quoting Iacobucci v. Boulter, 193 F.3d 14, 23 (1st Cir. 1999)). We first

recite the facts in the light most favorable to appellants Daran Edwards, Harry Jean, and Keith Kaplan. Then we discuss this lawsuit's procedural history.

A. Facts

On March 17, 2013, the appellees, brothers Christopher and Gavin Castagna, hosted a St. Patrick's Day party for their friends at Christopher's apartment, located on the first floor of a three-story building at the intersection of East 6th Street and O Street in South Boston. The party was large enough that Christopher and Gavin moved furniture in advance of the party's start to accommodate the number of guests and purchased a keg of beer. One of the police officers later estimated that when he arrived at the scene there were as many as thirty guests there. As one guest testified, St. Patrick's Day in Boston is basically "a big party throughout the entire city."

By early evening, many of the guests at the Castagnas' party were intoxicated. Different guests estimated that they drank "between [twelve] and [fifteen] beers," eleven to thirteen beers, "ten beers," and "seven or eight beers" that day, respectively.

At 5:54 p.m., someone called 911 to report a loud party at the intersection of East 6th Street and O Street, the intersection where Christopher's apartment was located. At 7:29 p.m., police dispatch directed a group of officers to respond to the call. The officers sent were part of a unit composed of seven

officers, including Edwards, Jean, and Kaplan. Although the unit normally worked in another neighborhood in the city, the officers had been reassigned to South Boston for the St. Patrick's Day holiday to supervise the parade in the morning and control "loud crowds, partying, [and] fighting" in the afternoon and evening. Many of the officers had done similar work on St. Patrick's Day in prior years.

The seven officers arrived at the scene at approximately 7:38 p.m. At that point in the evening, Christopher's apartment was the only one near the intersection with any observable signs of a party.

When Kaplan arrived on the scene, he heard screaming, music, and talking coming from Christopher's apartment. As he approached the apartment, Kaplan saw two or three guests leave the party. He thought one may have turned around and gone back inside, possibly to warn the others. In Kaplan's opinion, "[t]hey looked like they were underage." When he got close to the apartment, Kaplan could see into it because the "door was wide open." He also could see through the top of the window that there were people drinking inside. He testified that his first objective after arriving at the apartment was "to make contact with the owners."

Edwards gave a similar account. When he arrived, he also heard loud music and, through an open window, saw people drinking, some of whom he believed to be underage.

Jean arrived slightly after his fellow officers. He also heard music, saw that the front door was open, and noticed through the window that the people inside were drinking. He, too, believed that some of the guests were underage.[1] As he approached the apartment, Jean "saw a young male come stumbling outside" onto the public sidewalk. Jean testified that the young man "walked around like -- you know, like a circle or half-circle, and then he hurled over, vomiting, and he did that twice. And then he stumbled back into the address that we were looking at."

Kaplan reached the apartment door and yelled "hello" several times and then "Boston Police." No one answered. According to Kaplan, "[w]hen no one answered, we kind of walked in."

At that point, none of the officers were intending to arrest anyone at the party, for underage drinking or any other crime. Kaplan explained that this response was in line with the police department's normal practice for responding to noise complaints: "Typically, we would just knock on the door, try to see who the owners are and tenants and have them turn the music down, shut the doors, keep the windows up and keep everything

[1] Christopher, the host, admitted that he did not know the age of every guest at his party and did not ask to see anyone's identification. In addition, many of the guests who were of legal drinking age were only a few years older than twenty-one. One guest admitted at trial that at the time of the party she could have looked underage.

inside." Indeed, several of the officers did not have their handcuffs on them, which would have been necessary to make an arrest, explaining that they left them behind to lighten their load during a long day walking the parade route.

The officers explained at trial that there were two reasons for entering the home that evening: (1) to respond to the noise complaint by finding the homeowners and having them lower the volume of their music and (2) to make sure that any underage drinkers were safe, including the young-looking man who had vomited outside the home and returned inside.

Kaplan explained that "[o]f course, there's safety involved when there's underage drinkers." His goal was "to make sure everyone was safe, community caretaker, . . . trying to make sure that there weren't any other underage drinkers in there or that nobody was sick and nobody was throwing up." Jean testified that his intention when entering the home "was strictly just . . . the well-being check, . . . doing community caretaker work, and to speak to the owner, . . . to locate him, speak to him what's going on . . . because it was spilling onto the sidewalk."

The guests were in the middle of a dance competition when the police entered through the open door, and they did not immediately respond. Eventually, when they noticed the officers,

the guests turned off the music.[2] Kaplan explained that there had been a complaint of underage drinking and asked for the homeowners.

There was a lull in which no one answered. Eventually some of the guests told the police that the owner's name was "Chris," but he was not in the room and was "in the back or the bathroom or something to that effect." Jean and another officer went to look for Christopher while the others stayed in the kitchen with most of the guests.

The officers explained at trial why it was important to talk to the owner of the property even though there was no longer any disruptive, loud music. Jean testified: "[H]e's the person in control of the apartment . . . . He's the one who would probably authorize all these people to be here. . . . I don't know if it's an abandoned apartment and they're just throwing a party in it." Edwards agreed that it was important to talk to the homeowner "[b]ecause the homeowner is the person who's in charge of the apartment."

As Jean and the other officer made their way down the back hall, one of the guests heard them remark that they smelled

[2] One party guest testified that that she thought the music had been turned off. The police officers testified that their general practice was to have the music turned down when responding to noise complaints. The police officers were not asked at trial if the music was turned off or merely down when they initially entered the apartment. We assume arguendo the music was turned off.

drugs. The two officers knocked on the door of what they thought was the bathroom but was in fact Christopher's bedroom. According to Jean, the officers thought, "[w]e're going to let this guy use the bathroom, and then we'll talk to him, you know. We were patient. We had no problem." Jean eventually realized that the room they were waiting outside of was probably not a bathroom when he heard multiple voices coming from inside it, so he knocked on the door again. That was when Christopher and Gavin, who were inside with two other guests, heard the knocking at the door. Christopher opened the door for the officers. Christopher testified that this was the first time he realized police were in the apartment.

After Christopher opened the door for Jean, Jean announced himself as "Boston Police." Jean observed that Christopher appeared to have been drinking and noticed that there was marijuana in the bedroom. Christopher saw Jean looking at the marijuana, and in response he pushed Jean, slammed the door on Jean's foot, and held the door there.[3] Jean pushed the door back open, freeing his foot, and walked into the room.

[3] Under state law in 2013, possession of less than one ounce of marijuana was a civil offense, subjecting the offender to a fine and forfeiture of the marijuana. Mass. Gen. Laws ch. 94C, § 32L (repealed 2017). The marijuana found in Christopher's room was seized and he was cited for it.

Edwards and Kaplan, who noticed that Jean and the other officer were missing, went to the back rooms to look for them. At that point Edwards and Kaplan were still trying to figure out who the homeowners were so that the officers could respond to the loud party complaint.

In the bedroom, Christopher shoved Jean a second time and the conflict between the officers and the party guests escalated. Other officers were called as back-up. Eventually, several of the guests and both brothers were arrested on various charges. The rest of the details about what happened in the bedroom and after the other responding officers arrived are not relevant to this appeal.[4]

B. Procedural History

Christopher and Gavin sued the twenty Boston Police Officers who were involved in breaking up the party and arresting them, including Edwards, Jean, and Kaplan. The Castagnas brought civil rights claims under 42 U.S.C. § 1983 and Mass. Gen. Laws ch. 12, §§ 11H and 11I, as well as state tort claims for false imprisonment, assault and battery, false arrest, and malicious prosecution. By the start of the trial, the district court had

[4] The sole claim on appeal is the unlawful entry claim, which was brought against only Edwards, Jean, and Kaplan and relates just to the conduct described above.

dismissed several claims and removed from the lawsuit thirteen of the twenty defendants.

The trial was held over eight days between June 11 and 21, 2018. The Castagnas each advanced seven claims, brought variously against the seven remaining police officer defendants: unlawful entry under § 1983, unlawful seizure under § 1983, excessive force under § 1983, violation of the First Amendment under § 1983, assault and battery, false arrest, and malicious prosecution. The unlawful entry claim was brought against officers Edwards, Jean, and Kaplan only.

As to the unlawful entry claim, the district court declined to instruct the jury on the community caretaking exception to the warrant requirement over the defense's objections, explaining that it was not adequately defined in the law. Instead the jury was instructed on the exigent circumstances exception only, and the court stated that it would consider arguments about community caretaking in the context of qualified immunity after the jury returned its verdict.[5]

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[5] The jury instructions for the unlawful entry claim were as follows:

> Under the Fourth Amendment, no person shall be subjected to a warrantless search of his or her home except under exigent circumstances, that is, circumstances requiring immediate action and with probable cause.
>
> Probable cause exists if the facts and circumstances known to the Defendant are sufficient to warrant a reasonable police

Before the jury returned with its verdict, Edwards, Jean, and Kaplan filed a motion for judgment as a matter of law, in which they argued that their entry into both the apartment and the bedroom was justified by the community caretaking exception to the warrant requirement. Further, they argued that were entitled to qualified immunity on the same grounds and because the law on community caretaking in 2013 did not clearly establish that their entry violated either brother's constitutional rights.

The jury reached a unanimous verdict in favor of all of the defendants on all counts. As to the unlawful entry claim under § 1983, the jury was asked on the verdict form if Christopher or Gavin had proven by a preponderance of the evidence that Edwards, Kaplan, or Jean had violated their constitutional rights by entering either Christopher's apartment or specifically his bedroom on March 17, 2013. The jury responded "no" to each question for each of the three officers. The district court denied as moot Edwards, Jean, and Kaplan's motion for judgment as a matter

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> officer in believing that the plaintiff has committed or is committing a crime.
>
> Circumstances requiring immediate action are limited to the following:
>
> 1. hot pursuit of a fleeing felon;
> 2. threatened destruction of evidence;
> 3. risk of escape; and
> 4. threat to the lives and safety of the public, the police, or the plaintiff.

of law on the unlawful entry claim in light of the jury verdict in their favor.

On July 20, 2018, the Castagnas moved for a new trial, arguing that "the jury's finding that Defendants Kaplan, Edwards and Jean are not liable to Plaintiffs under 42 U.S.C. § 1983 for the unlawful entry into Christopher Castagna's home, or, at the very least, into Christopher Castagna's bedroom," is "against the law, the weight of credible evidence and constitutes a miscarriage of justice."[6]

On January 17, 2019, the district court granted the Castagnas' motion for a new trial, finding "that the verdict is against the law as to the warrantless entry into the home and that the warrantless entry on the facts at trial is not protected by qualified immunity." The court said the entry into the bedroom claim was merely a subset of the entry into the home claim, thereby saying it was not an independent claim.

Because the only issues still to be resolved at that point in the proceedings were legal issues, instead of holding a

[6] The Castagnas also argued that a new trial was warranted because "the Court improperly instructed the jury regarding disorderly conduct or disturbing the peace" and "in her closing, Defendants' counsel made improper references to Plaintiff Christopher Castagna being a racist, even though there was no evidence at trial that demonstrated that he was a racist, and the Court's curative instruction to the jury failed to cure the error." The district court rejected these arguments, and the plaintiffs have not appealed these denials.

new trial, the court instructed the Castagnas to move orally under Fed. R. Civ. P. 52 for the court to amend the judgment so that Edwards, Jean, and Kaplan would be liable for the unlawful entry claim. Without conceding their liability, the three officers moved for a ruling that the Castagnas had not proven a right to any damages beyond nominal damages.

On June 28, 2019, the district court amended its judgment under Fed. R. Civ. P. 52 so that it reflected a judgment in favor of Christopher and Gavin and against Edwards, Jean, and Kaplan as to the § 1983 unlawful entry claim. The court awarded the two brothers one dollar in nominal damages from each of the three officers. The court did not disturb any of the other jury verdicts.

This timely appeal followed.[7]

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[7] Edwards, Jean, and Kaplan make two arguments on appeal that we do not reach because we hold that they were entitled to qualified immunity.

First, they argue that the Castagnas "made a strategic choice" not to bring a motion for judgment as a matter of law, and in fact, were the parties to initially suggest a jury instruction on exigent circumstances. When the district court gave the instruction, they did not object. Having made these strategic choices, the officers argue, it was an abuse of discretion for the district court to then grant the Castagnas a new trial to save them from the consequences of those choices. Specifically, the officers argue that the district court misapplied the legal standards for granting a new trial by conducting a purely legal analysis, rather than one "keyed to the trial's fairness." In their view, the fact that the district court declined to actually hold a new trial and instead heard oral cross-motions pursuant to Fed. R. Civ. P. 52 only highlighted why the trial was fundamentally

II.

Edwards, Jean, and Kaplan were entitled to qualified immunity for the unlawful entry claim under a community caretaking theory.[8] As we explain below, neither part of the test for defeating qualified immunity has been met: the officers' entry into the home was in fact constitutional under the community caretaking exception and it was not clearly established at the time of their entry that the community caretaking exception would not give them an immunity defense.[9]

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fair and the new trial motion never should have been granted in the first place.

Second, the officers argue that, even assuming the district court's premise that it could grant a new trial motion in these circumstances, the court was wrong to find that the jury's verdict was against the law or weight of credible evidence. There was sufficient evidence for the jury to have considered and applied the emergency aid part of the exigent circumstances exception to the warrant requirement. Any finding to the contrary must have been based on the court's own assessment of witness credibility, which would be error. And even though the jury was never instructed on the community caretaking exception to the warrant requirement, "there was sufficient evidence for the jury to consider and decide the applicability of the community caretaking exception, [so] the jury's decision in [the officers'] favor was not unfair and did not affect [the Castagnas'] substantial rights."

Again, we do not reach these arguments.

[8] On appeal, the officers also argue that they are entitled to qualified immunity because their entry fell within the emergency aid exception to the warrant requirement. We need not reach this argument.

[9] As to qualified immunity for community caretaking, the officers argue,

> [q]ualified immunity impacts the instant case in two ways. First, as a general matter, the doctrine is "an immunity from suit" and so if

As to the claim made at trial that the entry into the bedroom constituted a separate offense, it is waived. It is waived because the district court did not grant a new trial on that ground and plaintiffs have not cross-appealed. It is also waived because it has not been briefed as required on appeal. See United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990).

A. Qualified Immunity Framework

When sued in their individual capacities, government officials like police officers Edwards, Jean, and Kaplan are immune from damages claims unless "(1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was 'clearly established at the time.'" Eves v. LePage, 927 F.3d 575, 582-83 (1st Cir. 2019) (en banc) (quoting District of Columbia

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> it applied here, the District Court should not have permitted Plaintiffs to proceed further against Defendants. White v. Pauly, 137 S. Ct. 548, 551 (2017). Second, qualified immunity is intertwined with the standard for a new trial; specifically, Federal Rule of Civil Procedure 61 provides that no error "is ground for granting a new trial [or] setting aside a verdict" unless "justice requires otherwise," and further, that "the court must disregard all errors and defects that do not affect any party's substantial rights." Consequently, if Defendants were entitled to qualified immunity, then a verdict in favor of Defendants did not affect Plaintiffs' substantial rights.

Because we hold that that the defendants were entitled to immunity and thus should not have had judgment entered against them, we do not analyze the issue in relation to the standard for a new trial.

v. Wesby, 138 S. Ct. 577, 589 (2018)). Courts may analyze either part of the test first. See id. at 584.

The "clearly established" inquiry itself has two elements. The first is focused on whether the law was "'sufficiently clear' such that every 'reasonable official would understand that what he is doing' is unlawful." Id. at 583 (alterations omitted) (quoting Wesby, 138 S. Ct. at 589). Qualified immunity is supposed to "protect 'all but the plainly incompetent or those who knowingly violate the law.'" Id. (alteration omitted) (quoting White v. Pauly, 137 S. Ct. 548, 551 (2017)).

Because of that, the right that was allegedly violated must be defined "in a particularized sense so that the contours of the right are clear to a reasonable official." Id. (internal quotation marks omitted) (quoting Reichle v. Howards, 566 U.S. 658, 665 (2012)). "[E]xisting precedent must have placed the statutory or constitutional question beyond debate." Id. (quoting Ashcroft v. al-Kidd, 563 U.S. 731, 741 (2011)). In Eves v. LePage, this court sitting en banc found that the defendant was entitled to qualified immunity where "it is 'at least arguable'" that the defendant's actions were constitutional, id. (quoting Reichle, 566 U.S. at 669), and where "[t]here was no 'controlling authority' or even a 'consensus of cases of persuasive authority,'" id. at 584 (quoting Wilson v. Layne, 526 U.S. 603, 617 (1999)).

The second element "focuses on the objective legal reasonableness of an official's acts," and "[e]vidence concerning the defendant's subjective intent is simply irrelevant." Id. at 583 (internal quotation marks and alteration omitted) (quoting Crawford-El v. Britton, 523 U.S. 574, 588, 590 (1998)). This element provides "some breathing room for a police officer even if he has made a mistake (albeit a reasonable one) about the lawfulness of his conduct." Gray v. Cummings, 917 F.3d 1, 10 (1st Cir. 2019) (quoting Conlogue v. Hamilton, 906 F.3d 150, 155 (1st Cir. 2018)).

B. The Officers Are Entitled to Qualified Immunity Because Under the Community Caretaking Exception Their Entry Through the Open Door of the Home Did Not Violate Plaintiffs' Constitutional Rights

Edwards, Jean, and Kaplan are entitled to qualified immunity for entering Christopher's apartment under the first prong of the test for qualified immunity. See Eves, 927 F.3d at 584. The entry did not violate the Castagnas' constitutional rights because the officers were allowed to enter the apartment through the open door under the community caretaking exception to the warrant requirement.

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. In general, "warrantless entries into a home 'are presumptively unreasonable.'" Morse v. Cloutier, 869 F.3d 16, 23

(1st Cir. 2017) (quoting Payton v. New York, 445 U.S. 573, 586 (1980)).

There are exceptions to the warrant requirement. One is the community caretaking exception, first described by the Supreme Court in Cady v. Dombrowski, 413 U.S. 433 (1973). In Cady, police officers searched a disabled car without a warrant because they believed that there was a gun in the car's trunk and the car was vulnerable to vandals. 413 U.S. at 448. The Court held that the search was constitutionally permissible because it was a reasonable exercise of the officers' "community caretaking functions," explaining that officers are often called on to act in ways "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." Id. at 441. This circuit has long applied the community caretaking exception described in Cady in the context of automobiles. See, e.g., United States v. Rodriguez-Morales, 929 F.2d 780, 785 (1st Cir. 1991).

This year, after the district court in this case issued its decision, this court held that the community caretaking exception could be used to justify police officers' entry into homes as well. Caniglia v. Strom, 953 F.3d 112, 124 (1st Cir. 2020). Police are entitled to enter homes without a warrant if they are performing a community caretaking function and their actions are "within the realm of reason." Id. at 123 (quoting

Rodriguez-Morales, 929 F.2d at 786). We apply the analysis laid out in Caniglia and hold that the officers' entry was justified under the community caretaking exception to the warrant requirement.

When determining whether the officers' actions are protected by the community caretaking exception, we "look at the function performed by [the] police officer." Id. at 125 (quoting Matalon v. Hynnes, 806 F.3d 627, 634 (1st Cir. 2015)). The function performed must be "distinct from 'the normal work of criminal investigation'" to be within "the heartland of the community caretaking exception." Id. (quoting Matalon, 806 F.3d at 634-35). Actions within that heartland include actions taken 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." Rodriguez-Morales, 929 F.2d at 784-85 (citing Wayne LaFave, Search and Seizure § 5.4(c) (2d ed. 1987)); see also Wayne LaFave, Search and Seizure § 5.4(c) (5th ed. 2012) (similar).

Here, the function being performed by Edwards, Jean, and Kaplan was a community caretaking one. When the officers arrived at the scene, they saw intoxicated guests who appeared to be underage entering and exiting a party freely through an open door. Jean saw a guest that looked underage leave the house, throw up twice outside, and then reenter the apartment. The party was loud

enough to be heard from the street. In their efforts to have the music turned down and make sure any underage guests were safe, they were aiding people who were potentially in distress, preventing hazards from materializing, and protecting community safety.

In determining whether the officers' actions are protected by the community caretaking exception, we also must "balance . . . the need for the caretaking activity and the affected individual[s'] interest in freedom from government intrusions" to determine if the officers' actions were reasonable.[10] Caniglia, 953 F.3d at 125.

The officers acted reasonably. The officers had an implicit invitation to go up on the porch and knock on the apartment's door. See Florida v. Jardines, 569 U.S. 1, 8 (2013). The officers did not enter the home until announcing themselves and failing to get the guests' attention. They needed to get the attention of the homeowner because he is the person ultimately responsible for the impact of the party on the neighborhood. Because they were responding to a 911 call reporting a noise

[10] In Caniglia, this court declined to decide whether probable cause or merely reasonableness was necessary to seize the plaintiff under the community caretaking exception, noting that the standard in that case might be higher because it is "of a greater magnitude than classic community caretaking functions like vehicle impoundment." Caniglia, 953 F.3d at 127. In this appeal, we apply our traditional reasonableness test.

complaint, the officers knew that people in the neighborhood were disturbed by the party. In addition, underage drinkers pose a safety risk. This is especially true on a holiday known for drinking and one that requires extra police officers to be deployed throughout the city.

Given the open front door, the people coming in and out of that open door at will, the evident lack of supervision by the owner of who entered, and the owner's failure to respond, any expectation of privacy was greatly diminished. It was objectively reasonable for an officer to have on-going concerns about noise complaints and underage drinking and determine that they might be easily resolved by entering through an open door (the same one the guests were coming and going through freely) to bring these complaints to the owner's attention.[11]

The officers' actions do not implicate any of the "limitations" on the community caretaking doctrine. Caniglia, 953 F.3d at 126. Nothing the officers said or did reasonably raises the possibility that they were relying on concerns about the noisy,

[11] In a 28(j) letter, the plaintiffs argue that Caniglia allows warrantless entry into homes under the community caretaking exception only when there is immediate danger. Not so. Caniglia happened to implicate the specific community caretaking function of trying to prevent someone in a state of crisis from using firearms. 953 F.3d at 125. That serious risk of harm was balanced against relatively serious government incursions on the individual's personal freedoms. Id. Police officers perform a variety of functions when in their community caretaking role, not all of which must implicate a risk of imminent harm.

open, and unsupervised party as "a mere subterfuge for investigation" of a crime. Id. (quoting Rodriguez-Morales, 929 F.2d at 787). Even if they had been motivated in part to enforce underage drinking laws, for example, "the possible existence of mixed motives will not defeat the officer's . . . entitlement to the exception." Matalon, 806 F.3d at 635; see also Caniglia, 953 F.3d at 128 (applying the community caretaking exception where the plaintiff was "imminently dangerous" to others and thus had the potential to commit a criminal offense).

The officers were able to give "specific articulable facts," Caniglia, 953 F.3d at 126 (quoting United States v. King, 990 F.2d 1552, 1560 (10th Cir. 1993)), to show their actions were "justified on objective grounds," id. (quoting Rodriguez-Morales, 929 F.2d at 787). They were able to describe specific observations about the party, its effect on the neighborhood, and their reasons for being concerned about at least some of the guests' safety. They could articulate why it was necessary to enter the home to talk to the homeowner when they could not get anyone's attention from outside of the house. The plaintiffs try to undermine this by arguing that the officers' actions, such as not immediately searching out the vomiting teenager, for example, show a subjective lack of concern for the party guests' safety. But the proper test is objective, and people who are below the legal drinking age and apparently sick from alcohol are an objective safety risk.

Further, the officers' actions "dr[e]w their essence" from "sound police procedure." Id. (citing Rodriguez-Morales, 929 F.2d at 785). As said in Caniglia, "sound police procedure" is defined "broadly and in practical terms." Id. The definition "encompasses police officers' 'reasonable choices' among available options." Id. (quoting Rodriguez-Morales, 929 F.2d at 787). There is no requirement that the officers had to have waited for a longer period outside the door, for example, in the hopes that someone eventually would hear them and fetch the owners without them ever entering the home. There is "no requirement that officers must select the least intrusive means of fulfilling community caretaking responsibilities." Id. (quoting Lockhart-Bembery v. Sauro, 498 F.3d 69, 76 (1st Cir. 2007)).

C. The Officers Are Entitled to Qualified Immunity Because in 2013 the Law Was Not Clearly Established that Entering the Home Was Unconstitutional Under the Community Caretaking Exception

The officers are entitled to qualified immunity under the second prong of the qualified immunity test as well. See Eves, 927 F.3d at 584. In 2013, there was no clearly established law that the officers' entrance into the apartment fell outside of the scope of the community caretaking exception.

As said, this circuit had not explicitly held until this year that the community caretaking exception could be applied to homes. Before 2013, some circuits had held that Cady's community caretaking exception applies only to automobiles, not homes. See

Ray v. Twp. of Warren, 626 F.3d 170, 176-77 (3d Cir. 2010) (collecting cases). But three other circuits before that date had applied the exception to homes as well as automobiles. See United States v. Quezada, 448 F.3d 1005, 1007 (8th Cir. 2006); United States v. Rohrig, 98 F.3d 1506, 1520-23 (6th Cir. 1996);[12] United States v. York, 895 F.2d 1026, 1029-30 (5th Cir. 1990). And neither the First Circuit nor the Supreme Court had held that the exception was limited to automobiles. In Lockhart-Bembery, this circuit did not limit the exception's application to the mere search of a car; it upheld an order by police officers to move a car off the side of a public road for safety reasons. 498 F.3d at 75-77.

There was no consensus of persuasive authority at the time of the officers' entry that the community caretaking exception could only apply to automobile searches. We reached the same conclusion in MacDonald v. Town of Eastham, 745 F.3d 8 (1st Cir. 2014), an opinion that post-dates the Castagnas' party by a year but relies on precedents that all pre-date the party. In MacDonald, this court explained that "the scope and boundaries of

[12] The Sixth Circuit wrote about "exigent circumstances" as well as community caretaking, but we still understand this case as applying a version of the community caretaking exception. As we discussed in MacDonald v. Town of Eastham, 745 F.3d 8 (1st Cir. 2014), "courts do not always draw fine lines between the community caretaking exception and other exceptions to the warrant requirement." Id. at 13.

the community caretaking exception [were] nebulous [in 2014]," but precisely because of this legal uncertainty, the court determined that the law was not clearly established that community caretaking could not apply to searches of a home. Id. at 14.

Nor was there a consensus of authority in 2013 that the specific circumstances surrounding the officers' entry into Christopher's apartment made their entry an unreasonable application of the community caretaking doctrine. This circuit's pre-2013 community caretaking decisions had established a framework for when the exception might apply to officers' searches. These decisions were the basis for the law applied in Caniglia.

The community caretaking exception is a recognition that

> [t]he policeman plays a rather special role in our society; in addition to being an enforcer of the criminal law, he is a "jack-of-all-emergencies," W. LaFave, Search and Seizure § 5.4(c) (2d ed. 1987), 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. . . . The rubric is a catchall for the wide range of responsibilities that police officers must discharge aside from their criminal enforcement activities.

Rodriguez-Morales, 929 F.2d at 784-85.

> The imperatives of the Fourth Amendment are satisfied in connection with the performance of non-investigatory duties, including community caretaking tasks, so long as the procedure involved and its implementation are reasonable. [Rodriguez-Morales, 929 F.3d at 785.] The community caretaking doctrine gives

> officers a great deal of flexibility in how they carry out their community caretaking function. See id. The ultimate inquiry is whether, under the circumstances, the officer acted "within the realm of reason." Id. at 786. 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 (some citations omitted). In 2013, like today, "[t]here [was] no requirement that officers must select the least intrusive means of fulfilling community caretaking responsibilities." Id. at 76.

The officers in 2013 also could have looked to other circuits that had had applied the community caretaking exception to warrantless entries into homes in circumstances analogous to this case. The Sixth Circuit, in Rohrig, held that police officers were permitted to enter a home without a warrant to search for the homeowner where they were responding to a noise complaint, knocked on the door and received no response, the door was open, and the officers announced their presence. 98 F.3d at 1509. The court understood this entry as an example of the officers exercising their "community caretaking functions," id. at 1521 (citing Cady, 413 U.S. at 441), and said that their actions were reasonable "because nothing in the Fourth Amendment requires us to set aside our common sense," id.

Similarly, in York, the Fifth Circuit held that the community caretaking exception applied to officers' entry into a

home when they were protecting guests who were removing their belongings from the house of a host who had become abusive and threatening. 895 F.2d at 1029-30. The court in York found it relevant that the host was exhibiting drunken behavior and was posing a risk of harm to others. Id. at 1030.

The Eighth Circuit, in an opinion by Judge Arnold, affirmed the denial of a motion to suppress evidence, holding that the community caretaking exception provided the police officer with a lawful basis for entering a home. Quezada, 448 F.3d at 1007-08. In that case, an officer attempting to serve a child protection order became concerned that the homeowner was in the house but somehow unable to respond. Id. at 1008. He knocked on the apartment door, which swung open on his knocking, and announced himself by yelling into the apartment several times. Id. at 1006. When he heard no response, he entered the home. Id.

Given this legal background, the officers could not have been on notice that their actions would clearly violate the Castagnas' constitutional rights. The officers testified that they were not intending to arrest anyone at the party; as in Rohrig, they merely wanted to make sure the music was turned down so it would stop disturbing the neighbors. As in York, they were concerned with mitigating the risk of harm of excessive drunkenness. Like the officer in Quezada, the police officers here knocked on the door and announced themselves before entering.

Their actions were at least arguably within the scope of the community caretaking exception. And for many of the same reasons discussed earlier in the opinion, their actions were at least arguably reasonable under the law in 2013.

As this circuit held in MacDonald, a similar case in which officers announced their presence at an open door, received no reply, and entered a home without a warrant, "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." 745 F.3d at 15. "Qualified immunity is meant to protect government officials where no such red flags are flying, and we discern no error in the application of the doctrine to this case." Id. (citation omitted).

D. Plaintiffs Waived the Argument that the Officers Violated Their Rights by Remaining in the House After the Music Was Turned Off

We briefly address the claim that the officers are separately liable for violating the Castagnas' constitutional rights, not only by entering the apartment originally, but by remaining in the apartment after the music was turned off and going toward the bedroom to look for the homeowner.[13] Although the

[13] The testimony taken in the light most favorable to the defendants shows that the officers knocked on the bedroom door and

officers' decision to remain in the apartment is more problematic than their decision to enter the apartment originally, the Castagnas have waived the argument that this is a separate violation of their rights.

The argument that there are two separately actionable Fourth Amendment claims in this case was made in the district court, but in its new trial order, the district court did not analyze the unlawful entry claim that way. The plaintiffs did not take a cross-appeal from the ruling that the entry into the bedroom claim was not independent of the entry into the home claim.

Regardless, the argument is waived for lack of developed argument on appeal. The plaintiffs' statement of issues only discusses the claim about the initial unlawful entry into the home.[14] The only legal support provided by the plaintiffs for their contention that these should be analyzed as separate claims are two inapposite district court opinions. See Barbosa v. Hyland,

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Christopher answered it. When Christopher saw Jean looking at the marijuana in his bedroom, he intentionally slammed the door on Jean's foot. Once he did that, Jean would have been entitled to enter the bedroom to arrest Christopher.

[14] Plaintiffs' briefing suggests there are potentially two actionable claims where they argue in the alternative that "[a]ssuming arguendo that Defendants' initial minimal entry was permissible for the purpose of gaining the attention of the guests, they could go no further after doing so" because "they had accomplished their goal" of turning off the music and were not trying to help the teenager who had twice vomited outside.

No. 11-11997-JGD, 2013 WL 6244157 (D. Mass. Dec. 2, 2013); Walker v. Jackson, 952 F. Supp. 2d 343 (D. Mass. 2013).[15] Arguments made perfunctorily and without developed argumentation are waived. See, e.g., Jordan v. Town of Waldoboro, 943 F.3d 532, 546-47 (1st Cir. 2019) (citing Zannino, 895 F.2d at 17).

III.

We reverse the judgment for the Castagnas and remand for the district court to enter judgment for Edwards, Jean, and Kaplan.

[15] Walker discussed the emergency aid exception, not the community caretaking exception. The district court in Walker found that an officer who searched the home after two other officers had already completed a search was not covered by the exception. 952 F. Supp. 2d at 349-50. In Barbosa, the district court specified that the officers "did not enter or remain in the house for any reasons supported by the community caretaking doctrine," but both aspects of the claim are analyzed together. 2013 WL 6244157, at *7-9.

APPENDIX B

United States Court of Appeals
For the First Circuit

No. 19-1677

CHRISTOPHER CASTAGNA; GAVIN CASTAGNA,

Plaintiffs, Appellees,

v.

HARRY JEAN; KEITH KAPLAN; DARAN EDWARDS,

Defendants, Appellants.

JEAN MOISE ACLOQUE; GARY BARKER; MICHAEL BIZZOZERO; TERRY COTTON; RICHARD DEVOE; JON-MICHAEL HARBER; CLIFTON HAYNES; GAVIN MCHALE; KAMAU PRITCHARD; WILLIAM SAMARAS; STEPHEN SMIGLIANI; ANTHONY TROY; JAY TULLY; BRENDAN WALSH; DONALD WIGHTMAN; JAMES DOE, Individually; JOHN DOE 1; JOHN DOE 2; JOHN DOE 3; JOHN DOE 4; JOHN DOE 5; JOHN DOE 6; JOHN DOE 7; JOHN DOE 8; JOHN DOE 9; JOHN DOE 10; JOHN DOE 11; JOHN DOE 12,

Defendants.

JUDGMENT

Entered: April 10, 2020

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The district court's judgment for Christopher and Gavin Castagna is reversed, and the matter is remanded for the district court to enter judgment for Daran Edwards, Harry Jean, and Keith Kaplan.

By the Court:

Maria R. Hamilton, Clerk

cc:
Hon. Indira Talwani
Robert Farrell, Clerk, United States District Court for the District of Massachusetts

Benjamin L. Falkner
James B. Krasnoo
Paul Joseph Klehm
Nicole Marie O'Connor
Katherine Nowland Galle

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHRISTOPHER CASTAGNA and GAVIN CASTAGNA,	*	
Plaintiffs,	*	
v.	*	Civil Action No. 15-cv-14208-IT
DARAN EDWARDS, ANTHONY TROY, JAY TULLY, KAMAU PRITCHARD, MICHAEL BIZZOZERO, KEITH KAPLAN, and HARRY JEAN, Individually,	*	
Defendants.	*	

MEMORANDUM & ORDER
January 17, 2019

TALWANI, D.J.

After a jury found in favor of all Defendants as to all claims, Plaintiffs Christopher Castagna and Gavin Castagna moved for a new trial, asserting that: (1) the jury verdict on the 42 U.S.C. § 1983 unlawful entry claim against Defendants Daran Edwards, Keith Kaplan, and Harry Jean is against the law and against the weight of the credible evidence; (2) the jury was improperly instructed on probable cause to arrest Plaintiffs for disorderly conduct and disturbing the peace; and (3) defense counsel improperly argued in her closing that Christopher Castagna was racist and that the court's supplemental jury instruction was insufficient to cure the prejudice, thus warranting a new trial on all claims. Pls.' Mot. New Trial at 1-2 [#292]. Finding that relief is not merited under the second and third argument, but that the verdict is against the law as to the warrantless entry into the home and that the warrantless entry on the facts at trial is not protected by qualified immunity, Plaintiffs' motion is ALLOWED as to the § 1983 unlawful entry claim against Defendants Edwards, Kaplan, and Jean, but is otherwise DENIED.

I. STANDARD

"A district court may set aside the jury's verdict and order a new trial only if the verdict is against the law, against the weight of the credible evidence, or tantamount to a miscarriage of justice." Casillas-Diaz v. Palau, 463 F.3d 77, 81 (1st Cir. 2006). In considering the weight of the evidence, the court views the evidence in the light most favorable to the non-moving party. Cambridge Plating Co. v. Napco, Inc., 85 F.3d 752, 764 (1st Cir. 1996).

II. THE UNLAWFUL ENTRY CLAIM

A. The Evidence at Trial

The events leading up to Defendants Edwards, Kaplan and Jean's entry to the apartment were, for the most part, not in dispute.

On March 17, 2013, Plaintiffs and most of the non-police witnesses spent the day enjoying various Saint Patrick's Day festivities in South Boston, eventually arriving at Christopher Castagna's first-floor apartment on East 6th Street. Defendants, all Boston Police Officers, spent the day patrolling the Saint Patrick's Day parade route, and after that, responding to party calls.

At 5:54 p.m., a 911 caller reported a loud party at the intersection of East 6th Street and O Street in South Boston. According to the caller, the party participants were "whipping" beer bottles off the second-floor porch, which faced 6th Street. Officer Kaplan did not hear the 911 call, but he received notice from dispatch of a disturbance and the street intersection where the party was located.

Around 7:29 p.m., when police officers, including Kaplan, Edwards, and Jean, approached East 6th Street and O Street, the only apartment with music and yelling was a first-floor apartment on 6th Street, later identified as Christopher Castagna's apartment. Officer Kaplan observed several people leave the apartment and other people inside drinking and

dancing. Detective Jean observed what appeared to be someone vomiting on the sidewalk outside of the apartment. Detective Edwards heard loud music as he approached the apartment.

According to the officers, the front door of the apartment was open. (Although Plaintiffs attempted to show that the temperature was too cool for the door to be open, there was no dispute that people were entering and exiting the apartment, and there was no direct evidence to contradict the officers' assertion that at the moment they arrived, the door was ajar). Officer Kaplan stepped into the apartment first and yelled "hello" and "Boston Police" into the apartment. No one answered right away. Without asking for permission, Officer Kaplan and Detectives Edwards and Jean walked into the apartment. At this point, the people inside the apartment stopped dancing, turned down the music, and walked over towards Officer Kaplan.

Officer Kaplan testified that when he entered the apartment, his objective was to get the attention of the homeowners and to tell them to keep the doors shut and the noise down. Officers Edwards and Jean also testified that their objectives were to contact the owner and ask him to turn the music down. Officer Kaplan and Detective Jean further testified that they had no intention of arresting anyone at the party.

After entering, the officers inquired about where the homeowners were. Some guests told the officers that the owner of the apartment, Christopher Castagna, was down the hall, in the bathroom. While Officer Kaplan and Detective Edwards stayed in the kitchen speaking to the guests, Detective Jean and another officer, Terry Cotton, walked down the hall.

B. The Officers' Entry Was Unlawful and Was Not Protected by Qualified Immunity

Plaintiffs argue that the entry of Officer Kaplan and Detectives Edwards and Jean into Plaintiffs' home and Christopher Castagna's bedroom was not supported by a warrant or exigent circumstances, and was not entitled to qualified immunity. Pls.' Mem. Supp. Mot. New Trial ("Pls.' Mem.") at 8-12 [#293]. Defendants respond that exigent circumstances did exist and

moreover, that the officers' actions were justified by an exception to the warrant requirement for police officers engaging in community caretaking functions. Defs.' Opp. Pls.' Mot. New Trial ("Defs.' Opp.") at 11-14 [#298]. Defendants further argue that the officers are also entitled to qualified immunity due to the unsettled nature of the community caretaking exception in 2013, at the time of the entry. Id. at 16.

1. The Officers' Entry Was Unlawful

The Fourth Amendment shields individuals from "unreasonable searches and seizures." U.S. Const. amend. IV. "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." Matalon v. Hynnes, 806 F.3d 627, 633 (1st Cir. 2015) (citing United States v. Martin, 413 F.3d 139, 146 (1st Cir. 2005)). "'A warrantless police entry into a residence is presumptively unreasonable unless it falls within the compass of one of a few well-delineated exceptions' to the Fourth Amendment's warrant requirement." Id. (quoting United States v. Romain, 393 F.3d 63, 68 (1st Cir. 2004)).

a. Exigent Circumstances

The well-delineated exceptions offered for exigent circumstances include: "(1) 'hot pursuit' of a fleeing felon; (2) threatened destruction of evidence inside a residence before a warrant can be obtained; (3) a risk that the suspect may escape from the residence undetected; or (4) a threat, posed by a suspect, to the lives or safety of the public, the police officers, or to [themselves]." Hegarty v. Somerset Cty., 53 F.3d 1367, 1374 (1st Cir. 1995) (citing Minnesota v. Olsen, 495 U.S. 91, 100 (1990)). "[A] subset of the exigent circumstances rubric covers 'emergency aid.'" Matalon, 806 F.3d at 636. Within this emergency aid exception, "law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." Brigham City v. Stuart, 547 U.S. 398, 403 (2006). "[A] cognizable exigency must present a 'compelling necessity for

immediate action that w[ould] not brook the delay of obtaining a warrant.'" Hegarty, 53 F.3d at 1374 (quoting United States v. Almonte, 952 F.2d 20, 22 (1st Cir. 1991)). Thus, in an emergency situation, police "'may enter a residence without a warrant if they reasonably believe that swift action is required to safeguard life or prevent serious harm.'" Matalon, 806 F.3d at 636 (quoting United States v. Martins, 413 F.3d 139, 147 (1st Cir. 2005)).

At the hearing on the pending motion, Defendants argued that the officers properly entered the apartment without a warrant due to a concern for safety of underage party goers. The weight of the evidence does not support this claim of a concern for the safety of underage party goers, let alone a need for emergency assistance. Although Detective Jean testified that he saw someone vomiting twice outside of the apartment, he also admitted that he did not look for or inquire inside about the person who vomited. No other officer testified that they observed any vomiting inside or outside of the apartment. Prior to entering the apartment, none of the officers observed anything remarkable about the scene in the apartment; Officer Kaplan testified that he observed people dancing and Detective Edwards testified that he observed people chatting and drinking from cups.

During the trial, none of the officers articulated any concern as to an emergency need to enter. Nor did the officers articulate a specific safety concern other than the possibility that the party goers may have been underage, and as to that concern, none of the officers testified to asking any party goers their age or for identification. Officer Kaplan testified that upon entering the home, the guests were cooperative. None of the officers testified that the anyone tried to run or hide from the officers to avoid detection. Cf. Howes v. Hitchcock, 66 F. Supp. 2d. 203, 208-215 (D. Mass. Sept. 9, 1999) (finding that officers are entitled to qualified immunity for entering house after monitoring underage party outside, announcing police presence at the entryway, and observing teenagers run to basement and climb out of bedroom window to escape detection).

Furthermore, all three men testified that they were responding to a noise complaint and that their primary objective in entering the home was to find the owner and ask him to turn down the music. In Commonwealth v. Kiser, 48 Mass. App. Ct. 647 (2000), like here, the police officers entered a home without a warrant when responding to a noise disturbance complaint. Id. at 649. As the court explained there, "[t]his situation does not involve the degree of exigency needed to bypass the Fourth Amendment." Id. at 651-652. Thus, the officer's actions do not fall within the exigent circumstance exception.[1]

b. *Community Caretaking Exception*

Defendants also argue that the search was appropriate as a "community caretaker" search because the search was "totally divorced from criminal investigation activity." Defs.' Mem. at 12 [298]. The court rejected this argument when Defendants asked for a "community caretaker" instruction for the jury and rejects the argument again here.

This exception to the warrant requirement for searches "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute" has been allowed by the United States Supreme Court as to cars. Cady v. Dombrowski, 413 U.S. 433, 441, 447-48 (1973); see also United States v. Rodriguez-Morales, 929 F.2d 780, 785 (1st Cir. 1991) ("[b]ecause of the ubiquity of the automobile . . . and the automobile's nature . . . the police are constantly faced with dynamic situations . . . in which they, in the exercise of their community caretaking function, must interact with car and driver to promote public safety."). In

[1] Defendants also argue that their actions qualify as exigent circumstances under Commonwealth v. Tobin, 108 Mass. 426 (1871) and Ford v. Breen, 173 Mass. 52 (1899). Defs.' Mem. at 13 [#298]. The Massachusetts Court of Appeals addressed the two cases in Kiser, noting that "[it] is true that two earlier Massachusetts cases decided in the late nineteenth century upheld an officer's right to enter a home without a warrant to quell a breach of the peace, but the noise that precipitated the officers' entries in those cases was that of violent fighting, with the attendant fear that someone inside was in physical danger." 48 Mass. App. Ct. at 651.

performing this community caretaking role, a police officer is "'a jack-of-all emergencies,' . . . 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." Id. at 784–85 (1st Cir. 1991) (internal citation omitted).

In the 45 years since Cady, the First Circuit has declined to directly address claims of a community caretaking exception for searches of homes, but also has not endorsed such an exception. In United States v. Tibolt, 72 F.3d 965 (1st Cir. 1995), where the court did not need to reach the issue after finding exigent circumstances permitted the warrantless entry, the court responded to the government's request to characterize the warrantless entry as a "so-called 'community caretaker'" exception, with a citation to Cady's note of the "'constitutional difference' between search of home and search of automobile." Id. at 969 n.2 (quoting Cady, 413 U.S. at 439). The Tibolt court also listed decisions from three other circuits finding that Cady applied only to searches of automobiles and not homes. Id. (citing 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. Pichany, 687 F.2d 204, 209 (7th Cir. 1982)).[2]

These circuits have since been joined by the Third Circuit in Ray v. Township of Warren, 626 F.3d 170 (3rd Cir. 2010), where the court "agree[d] with the conclusion[s] of the Seventh, Ninth, and Tenth Circuits on this issue, and interpret[ed] the Supreme Court's decision in Cady as being expressly based on the distinction between automobiles and homes for Fourth Amendment purposes." Id. at 177; see also id. at 175 (noting that the Supreme Court "expressly distinguished" the searches, noting that a "search of a vehicle may be reasonable 'although the

[2] The First Circuit has declined on two more occasions to endorse or reject application of the community caretaking exception to police activities involving a person's home. See MacDonald v. Town of Eastham, 745 F.3d 8, 13 (1st Cir. 2014) and Matalon v. Hynnes, 806 F.3d 627, 634 (1st Cir. 2015). Both cases are discussed below in the section on qualified immunity.

result might be the opposite in a search of a home.'") (quoting Cady, 413 U.S. at 440). That distinction "recognizes that the sanctity of the home 'has been embedded in our tradition since the origins of the Republic.'" Id. (quoting Payton v. New York, 445 U.S. 573, 601 (1980)).

And as the Third Circuit explained, while the Sixth and Eighth Circuits have referenced a community caretaking exception, their analyses appear to actually use a "modified exigent circumstances test." Id. at 176 (citing United States v. Quezada, 448 F.3d 1005 (8th Cir. 2006) (holding "that an officer acting in a community caretaking role may enter a residence when the officer has a reasonable belief that an emergency exists that requires attention") and United States v. Rohrig, 98 F.3d 1506, 1519 (6th Cir.1996) (holding that "ongoing and highly intrusive breach of a neighborhood's peace in the middle of the night constitutes exigent circumstances justifying warrantless entry")); see also United States v. Williams, 354 F.3d 497, 508 (6th Cir. 2003) ("[D]espite references to the doctrine in Rohrig, we doubt that community caretaking will generally justify warrantless entries into private homes.").

In sum, Defendants' claim that they are entitled under the law to enter an occupied home, without a warrant or consent, to find the owner to have him turn down the music, simply because they were not involved in criminal investigation activity, is supported by neither case law nor reason.

2. The Officers' Entry Was Not Protected by Qualified Immunity

Defendants argue that they are protected from liability for the entry under the doctrine of qualified immunity. Defs.' Mem. at 14-16 [#298]. For qualified immunity to apply, the court must explore "whether the facts that a plaintiff has alleged or shown make out a violation of a constitutional right" and "whether the right at issue was 'clearly established' at the time of defendant's alleged conduct." Matalon, 806 F.3d at 633 (quotations and citations omitted). Defendants fail the first prong, as detailed above. The court turns here to the second prong and

finds the right at issue to be clearly established at the time of Defendants' warrantless entry into Plaintiffs' home.

Defendants rely on the First Circuit's decision in MacDonald, where the court stated that "'the reach of the community caretaking doctrine is poorly defined' outside of the motor vehicle milieu," that the court "'has not decided whether the community caretaking exception applies to police activities involving a person's home,'" and that the First Circuit's "survey of the case law revealed that 'the scope and boundaries of the community caretaking exception [were] nebulous.'" Defs.' Mem. at 14-15 [#298] (quoting MacDonald, 745 F.3d at 13-14). Moreover, Defendants note, 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. (quoting MacDonald, 745 F.3d at 15). Defendants' reliance on the First Circuit's comments on the poorly defined reach of the doctrine outside of the automobile context, without consideration of the specific facts at issue in that case or here, suggests that, in their view, officers are immune from all entry and search of an occupied home so long as the officer is not engaged in criminal investigation and claims instead a "community caretaking" function. The court disagrees.

Although the First Circuit did find the officers' entry into the home in MacDonald to be protected by qualified immunity, the facts in MacDonald were quite different than those here. In MacDonald, police officers responded to a call from a citizen concerned about a neighbor's front door standing wide open. 745 F.3d at 10. The police officers first interviewed the citizen, then approached the neighbor's home, announced their presence, and entered the home only after receiving no response. Id. The entry and search of a home with an open door and no response from any inhabitant was taken "to ensure that nothing was amiss." Id. at 14. As the court noted,

"given the parade of horribles that could easily be imagined had the officers simply turned tail, a plausible argument can be made that the officers' actions were reasonable under the circumstances." Id. The language concerning the absence of a "red flag" followed the court's discussion of cases in other states finding the community caretaking exception applicable on facts, similar to those in MacDonald, involving the entry of homes where doors were open, no occupants responded to the officers' inquiry, and there were true safety concerns.

Here, in contrast, while the door was open, the front room was filled with people, and Defendants' reason for entering was to find the owner and have him turn down the music. Even if a plausible argument can be made that the officers' initial step across the threshold of the open door was reasonable as necessary to obtain the partygoers attention, there is no argument that the officers' further entry into the home was reasonable once the partygoers' attention was obtained. Unlike in MacDonald, no "parade of horribles . . .[can] . . . be imagined" if the officers simply had directed the guests to keep the music down or had waited outside for the guests to bring the owner to the door.

The First Circuit again addressed qualified immunity in connection with a community caretaking argument in Matalon. There the court explained that this exception "'requires a court to look at the *function* performed by a police officer' when the officer engages in a warrantless search or seizure." 806 F.3d at 634 (emphasis in original) (quoting Huntsberger v. Wood, 570 F.3d 546, 554 (4th Cir. 2009)). The entry in Matalon involved the pursuit of a robber. Id. at 631. The court found a reasonable officer standing in the defendant's shoes should have known that her warrantless entry while pursuing a fleeing felon in the aftermath of a robbery was not within the compass of the community caretaking exception and that her intrusion into the plaintiff's home abridged his constitutional rights. Id. at 636. As the court explained,

> In sum, the contours of both the plaintiff's right to enjoy the sanctity of his home and the heartland of the community caretaking exception were sufficiently clear to alert [the officer] that her plan of action—a warrantless entry—would infringe the plaintiff's constitutional rights. Put another way, an objectively reasonable officer should have known that a warrantless entry into the plaintiff's home could not be effected on the basis of the community caretaking exception.

Id. at 635. The court underscored that "[t]hough the precise dimensions of the community caretaking exception are blurred, that circumstance does not mean that every attempt to resort to the exception must be regarded as arguable." Id.

Here, an objectively reasonable officer in Defendants' position would have known of Plaintiffs' right to enjoy the sanctity of their home, and moreover, that the function sought to be performed by the police – having the noise turned down at a party – was well beyond the safety or emergency aid function that would arguably fall within any community caretaking exception. Finding otherwise, as another judge in this district has noted, "would be a betrayal of the bedrock principle at the foundation of the Fourth Amendment, the protection of the home." Hutchins v. McKay, 285 F. Supp. 3d. 420, 427 (D. Mass. 2018) (rejecting the officers' qualified immunity argument).

Accordingly, because the weight of the evidence does not demonstrate that Defendants Kaplan, Edwards, and Jean's entry into Christopher Castagna's home falls within an exception to the Fourth Amendment's warrant requirement, this court grants Plaintiffs' request for a new trial as to the 42 U.S.C. § 1983 unlawful entry claim.[3]

III. PLAINTIFFS' FALSE ARREST CLAIMS

A. The Evidence at Trial

The events that followed the officers' entry into the home was very much in dispute.

[3] In allowing Plaintiffs' motion as to the unlawful entry of the home, the court need not address separately whether Defendants Edwards, Jean, and Kaplan unlawfully entered Christopher Castagna's bedroom, as it is a subset of the same claim.

Detective Jean testified that after waiting outside the door of what he understood was the bathroom, he heard noise inside, like people chatting. He knocked on the door, and Christopher Castagna opened it. The room was not a bathroom, but a bedroom, with Christopher Castagna's girlfriend, Samantha Pratt, his friend John Doran, and Gavin Castagna inside of the room.

Detective Jean testified further that after Christopher Castagna opened the door and saw Detective Jean, Christopher Castagna promptly shut the door on Detective Jean's foot. Detective Jean testified that he pushed the door open, and entered the room, and that after he entered the room, Christopher Castagna pushed him. (Christopher Castagna denies being the person who pushed Detective Jean). Officer Kaplan and Detective Edwards testified that they ran to Christopher Castagna's bedroom after they heard yelling and swearing coming from the room.

Detective Jean informed Christopher Castagna that he was under arrest. The officers did not have handcuffs and they requested backup officers to bring handcuffs to the apartment. Detective Jean and Officer Cotton escorted Christopher Castagna from the bedroom into the kitchen area. Before doing so, the officers asked everyone else in the bedroom to leave that room, and Detective Jean told Christopher Castagna to tell the party goers to leave the apartment. When he was brought to the kitchen, rather than asking the party goers to leave, Christopher Castagna instead told everyone to record everything with their phone cameras.

At some point, backup officers, including Anthony Troy, Jay Tully, Kamau Pritchard, and Michael Bizzozero arrived at the apartment with handcuffs. Officers testified that once they obtained handcuffs, Christopher Castagna actively resisted arrest, by stiffening and then flailing his arms; the officers eventually had to pull him to the ground to arrest him. (Christopher Castagna denies resisting arrest). Christopher Castagna was eventually handcuffed, escorted from his apartment, and brought to the police station. He was charged with assault and battery on a police officer, keeper of a disorderly house, and disturbing the peace.

Officers testified further that Gavin Castagna attempted to stop a police officer from arresting another party goer by grabbing the officer's shoulder. Sergeant Troy testified that he grabbed Gavin Castagna, told him to back off, and attempted to place him under arrest, but Gavin attempted to struggle and pulled away from Sergeant Troy. Both Sergeant Troy and Gavin Castagna fell to the ground. Ultimately, other officers assisted in placing handcuffs on Gavin Castagna and he was brought to the police station. Gavin Castagna was initially charged with assault and battery on a police officer and resisting arrest; however, the charges were amended to disturbing the peace and resisting arrest.

B. Plaintiffs Are Not Entitled to a New Trial on their False Arrest Claims

Plaintiffs further argue that the court provided incomplete jury instructions as to the elements for disturbing the peace and disorderly conduct, and that these incomplete instructions may have allowed the jury to improperly find probable cause to arrest on these grounds. Plaintiffs. Pls.' Mem. at 13-16 [#293]. Defendants accurately argue that Plaintiffs must demonstrate that the alleged error in instructing the jury affected Plaintiffs' "substantial rights." Defs.' Opp. at 4 [#298]; see Mejias-Aguayo v. Doreste Rodriguez, 863 F.3d 50, 57 (1st Cir. 2017) (quoting Play Time, Inc. v. LDDS Metromedia Commc'ns, Inc., 123 F.3d 23, 29 n.7 (1st Cir. 2001)). An error "affects 'substantial rights' only if it results in substantial prejudice or has a substantial effect on the outcome of the case." Play Time, Inc., 123 F.3d at 29 n. 8. The challenged jury instructions, if erroneous, did not affect Plaintiffs' substantial rights because the evidence presented at trial supported the jury's finding that Defendants had sufficient probable cause to arrest.

An arrest is lawful when the arresting officer has probable cause. Tennessee v. Gardner, 471 U.S. 1, 7 (1985). An officer has probable cause, when, at the time of the arrest, the "facts and circumstances within the officers' knowledge . . . are sufficient to warrant a prudent person,

or one of reasonable caution, in believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense." Michigan v. DeFillippo, 443 U.S. 31, 37 (1979). "[A]n officer's state of mind (except for facts that he knows) is irrelevant to the existence of probable cause," and his "subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause." Devenpeck v. Alford, 543 U.S. 146, 153 (2004); United States v. Jones, 432 F.3d 34, 41 (1st Cir. 2005). "[T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.'" Devenpeck, 543 at 153 (citing Whren v. United States, 517 U.S. 806, 812-13 (1996)).

Detective Jean testified that after opening his bedroom door, Christopher Castagna shoved him from the doorway and shut the door on his foot. Several moments later, after he entered the room, Christopher Castagna pushed Jean again. Another officer, Sergeant Troy, testified that Gavin Castagna interfered with the arrest of another party goer by grabbing the shoulder of the officer attempting to arrest that person. After Sergeant Troy tried to place Gavin under arrest, Gavin resisted arrested by refusing to put his arms behind his back and pushing Troy. These acts alone are sufficient probable cause to arrest. The weight of the evidence thus demonstrates that Defendants had probable cause to arrest Gavin and Christopher Castagna. Plaintiffs' request for a new trial as to the 42 U.S.C § 1983 unlawful seizure and common law false arrest claims is denied.

IV. CLOSING ARGUMENTS

A. Related Trial Testimony

All but one of the officers who entered the apartment, including the two officers who first entered Christopher Castagna's bedroom, were black, while almost all of the party goers were

white. Christopher Castagna testified that the men who entered his room were "wearing masks" and that he initially thought that he was being robbed. Officer Kaplan testified that when he, the only non-black police officer, entered the room, Christopher Castagna became calmer and spoke to him in a normal level.

The day after the arrests, Gavin Castagna sent and received multiple text messages to friends related to the incident. Their text messages, introduced as Exhibits 75 and 86 at trial, include statements such as, "We all need to meet up sometime in the next few days to go over the events with each other so we can have the story for our lawyers," and "We are getting all our stories together at Chris's right now."

Gavin Castagna's text communications also used derogatory language, including racial slurs, in describing the police officers. In less explicit messages, he stated, "[the police officers] were all huge black cops from the gang unit in Roxbury," "I felt like I was in a rap video," and "Cause black cops hate whites." Gavin Castagna also described the incident as "a matter of race. Black cops beating up white people." Six months later, he still referred to the officers in text messages using racial slurs.

B. Closing Arguments

Plaintiffs object to portions of defense counsel's closing argument, where counsel stated as follows:

> You have seen Chris and Gavin testify in this courtroom. They presented very well. Very polite. Nice suits. But Trial Chris and Trial Gavin are not the real Chris and the real Gavin. Trial Chris and Trial Gavin are not the Chris and Gavin that these officers encountered on March 17, 2013. Real Chris assaults police officers, and Real Gavin is a racist. But that's not a good look when you're trying to get a jury to award you damages, which is why Attorney Klehm told you at the beginning of this case, in his opening statement, that you're going to hear some racially charged language that came from Gavin Castagna, but don't pay attention to that. It's not important. Don't let it distract you. Chris and Gavin don't want you to pay attention to who they really are or what they really did that day because they would prefer that you use your imaginations. And those are not my words.

> That is another quote from Gavin. He said, "The video going black is good because it leaves it up to people's imaginations."
>
> And so they have concocted this theory, which Attorney Falkner just called a battle plan, where the police are targeting Gavin and Chris because they're white, where these officers are knocking and punching phones out of people's hands to prevent them from showing their misconduct, where the police are putting on masks and stepping on Chris' neck and saying things like, "They've got cell phones, come in hard." That is not reality. In fact, I think all of these officers would agree that that sounds pretty unreasonable. But none of this stuff happened. This is a fiction that Chris and Gavin have created because, at the end of the day, they don't like that these police officers, especially black police officers, who Gavin refers to as the n-word, were in their home no matter how reasonable of an explanation the officers had to be there.
>
> As Attorney Klehm mentioned in his opening, Chris and Gavin weren't attacking all cops. He made that very clear. It's just something about this group in particular that Gavin and Chris have a problem with. And I submit to you that's because six out of the seven officers who entered that apartment originally were black and that, had Officer Kaplan been the officer to go into the bedroom that evening, we wouldn't be sitting here because, after all, the hostility of this whole incident only begins as a result of Chris and Gavin's initial interaction with Detective Jean.

Tr. Closing Argument, Day 8, 92:25-93:5, 104:18-105:2 [#296].

> Plaintiffs' counsel objected to the closing argument at sidebar:
>
> Your Honor, I'm very concerned about, and I would ask for some kind of instruction. There was no evidence whatsoever that Christopher had any kind of racial motives whatsoever, and it was suggested during the closing argument that Christopher, just like Gavin, was behaving on the basis of race. There was just no evidence that he had any kind of racial motive whatsoever. And I think it was unfair, unfairly prejudicial, and the jury needs to be instructed that there was nothing like that. The general instruction [that lawyers' arguments are not evidence] is not sufficient to cure this.

Defs.' Opp. Ex. A, 111:21-112:7 [#298-1].

Plaintiffs' counsel made no request for a mistrial. He then proceeded with rebuttal, in which he argued to the jury that there was no evidence that Christopher Castagna has any racial prejudice. Id. 115:20-25. The court provided a general instruction to the jury:

> Arguments and statements by the plaintiffs' lawyers or the defendants' lawyers are not evidence. What the attorneys say in their opening statements and closing arguments is intended to help you interpret the evidence but it is not evidence.

Id. 126:18-22. The court also provided a curative instruction addressing the text messages.

> I do want to give a further instruction regarding Gavin Castagna's text messages. These text messages were to or from Gavin Castagna, and not Christopher Castagna. There is no evidence that Christopher Castagna made or received any of these messages, and, accordingly, you may not consider these messages in any way in considering Christopher Castagna's actions or statements or in evaluating Christopher's credibility.

Id. 128:25-129:7.

C. Plaintiffs Are Not Entitled to a New Trial Based on Defendants' Closing Argument

Plaintiffs now argue that it was improper for Defendants' counsel to suggest that Christopher Castagna would not have been hostile had Officer Kaplan, who was white, gone into the bedroom first instead of Detective Jean, who was black. They argue further that the closing arguments unfairly painted Christopher Castagna as a racist, even though only Gavin Castagna had used a racial slur, and that Defendants' counsel left the jury to think that, because of his alleged racism, Christopher Castagna was part of a scheme to create a false story about the actions of the police officers, and that "the claim that the brothers concocted a story about what happened because of the race of some of the officers is unfair and untrue." Pls.' Mem. at 17-20 [#293]. Plaintiffs argue further that the court's curative instruction "constituted plain error," and that the result was a "substantial miscarriage of justice" and requires a new trial as to all claims. Id. at 17-18.

A determination of whether a closing statement was prejudicial depends on the totality of the circumstances, including: "(1) the nature of the comments; (2) their frequency; (3) their possible relevance to the real issues before the jury; (4) the manner in which the parties and the court treated the comments; (5) the strength of the case; and (6) the verdict itself." Mejias-

Aguayo v. Doreste Rodriguez, 863 F.3d 50, 55 (1st Cir. 2017) (quoting Granfield v. CSX Transp., Inc., 597 F.3d 474, 490 (1st Cir. 2010)).

The court starts first with the strength of the case. With or without the closing statement, the evidence strongly supported the officers' version of events. Although the entry was improper as discussed, the evidence at trial was overwhelmingly supported Defendants' version of events. While the witnesses who testified on behalf of the Plaintiffs all claimed that they were not drunk at the time of the events, most conceded that they had been drinking since morning, making their recollection of events far less reliable than otherwise. And as Plaintiffs attempted to piece together what happened and may well have convinced themselves as to the truth of their version, the events they described did not seem credible. For example, while witnesses for Plaintiffs contended that they were assaulted for filming the officers, the jury appears to have found, and the court agrees, that the film footage does not support Plaintiffs' version of events. In another example, friend John Doran testified that he heard Sergeant Troy as Troy was entering the Castagna residence say something to the effect of, "they have their phones out, come in hard." Doran also testified that he saw Brian Feltch, another friend, leaning over the railing near the doorway holding his phone as Sergeant Troy walked into the apartment. Troy testified meanwhile that he was hit in the face with the phone as he entered the apartment. While Feltch may not have intended to hit Troy in his face, Troy's recounting of being hit was far more credible than Doran's testimony that Troy told his officers to "come in hard" because the party goers had cell phones. Similarly, while Christopher Castagna testified that as he was being handcuffed, he was told to shut up and had his necked stepped on by Officer Bizzozero, and while he offered as evidence of this alleged assault, Trial Exhibit 15E, the exhibit only shows Officer Bizzozero looking down, and shows no evidence of this alleged brutal assault. The jury had more than ample reason to credit the officers' version of events.

To the extent that defense counsel argued that Christopher Castagna's perceptions or reactions may have been based on racial stereotyping, there was no error. Christopher Castagna testified that when he first saw Detective Jean at his bedroom door, he believed that he was about to be robbed. Officer Kaplan testified that Christopher Castagna noticeably calmed down when he spoke him as opposed to when Detectives Jean and Edwards, two black police officers, spoke to him. Defendants' closing statement draws a reasonable inference based on these interactions. That Christopher Castagna initially thought the black officers were robbers (but may have understood that they were police officers once the white officer joined the others) is relevant, as it suggests that his perception of what was happening may well have been affected by stereotypes that affect understanding, actions and decisions in an unconscious manner. Defense counsel's comments on such evidence does not amount to a miscarriage of justice.

Throughout the rest of defense counsel's 35-minute closing, defense counsel differentiated as to what the evidence established for each Plaintiff, arguing that "Real Chris assaults police officers, and Real Gavin is a racist." Trial Tr. Day 8, 92:3-4 [#296]. In addressing the text messages, defense counsel argued that they were indicative of Gavin Castagna's state of mind. Id. 103:1-104:1-17 ("What matters is what Gavin thought at the time of the incident, and his text messages speak for themselves.").

To the extent that defense counsel may have inferred anything negative about Christopher Castagna based on Gavin Castagna's text messages, the court provided a curative instruction. Plaintiffs did not object again following the curative instruction or seek a mistrial. See Granfield, 587 F.3d at 490-91; Hatfield-Bermudez v. Aldanondo-Rivera, 496 F.3d 51, 64 (1st Cir 2007) ("The granting of a mistrial is a last resort, and the trial court's usual remedy for an impropriety will be to give a curative instruction.").

In sum, defense counsel's closing did not result in a miscarriage of justice.

V. CONCLUSION

For the foregoing reasons, this court grants Plaintiffs' Motion for a New Trial [#292] as to the 42 U.S.C. § 1983 unlawful entry claim as to Defendants Daran Edwards, Keith Kaplan, and Harry Jean. The motion is otherwise denied.

IT IS SO ORDERED.

Date: January 17, 2019

/s/ Indira Talwani
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHRISTOPHER CASTAGNA and GAVIN CASTAGNA,	*	
Plaintiffs,	*	
v.	*	Civil Action No. 15-cv-14208
HARRY JEAN, et al.,	*	
Defendants.	*	

AMENDED JUDGMENT
June 28, 2019

TALWANI, D.J.

In accordance with the verdict of the jury and the orders of this court:

1. All claims by Plaintiffs Christopher Castagna and Gavin Castagna against Defendants Richard DeVoe, Jon-Michael Harber, Clifton Haynes, Gavin McHale, William Samaras, Stephen Smigliani, Donald Wightman, Jean Moise Acloque, Brendan Walsh, Gary Barker, and Terry Cotton are dismissed.

2. As to Defendant Daran Edwards:

   a. Plaintiff Gavin Castagna's claim set forth in Count VIII (malicious prosecution) is dismissed;

   b. Plaintiffs Christopher Castagna's and Gavin Castagna's claims set forth in Count III (M.G.L. c. §§ 11H and 11I), Count V (false imprisonment), and Count IX (intentional infliction of emotional distress) are dismissed;

   c. Judgment is entered in favor of Defendant Daran Edwards as to Plaintiff Christopher Castagna's claims set forth in Count VI (assault and battery), Count VII (false arrest), and Count VIII (malicious prosecution)); and

   d. Judgment is entered in favor of Plaintiffs Christopher Castagna and Gavin Castagna in the amount of $1 each as to the 42 U.S.C. § 1983 unlawful entry claim, and in favor of Defendant Daran Edwards as to all remaining claims set forth in Count I (42 U.S.C. § 1983).

3. As to Defendant Keith Kaplan:

   a. Plaintiffs Christopher Castagna's and Gavin Castagna's claims set forth in Count III

(M.G.L. c. §§ 11H and 11I), Count V (false imprisonment), and Count IX (intentional infliction of emotional distress) are dismissed;

b. Judgment is entered in favor of Defendant Keith Kaplan as to Plaintiff Christopher Castagna's claims set forth in Count VI (assault and battery), Count VII (false arrest), and Count VIII (malicious prosecution)), and as to Plaintiff Gavin Castagna's claim set forth in Count VIII (malicious prosecution)); and

c. Judgment is entered in favor of Christopher Castagna and Gavin Castagna in the amount of $1 each as to the 42 U.S.C. § 1983 unlawful entry claim, and in favor of Defendant Keith Kaplan as to all remaining claims set forth in Count I (42 U.S.C. § 1983).

4. As to Defendant Harry Jean:

a. Plaintiff Gavin Castagna's claim set forth in Count VIII (malicious prosecution) is dismissed;

b. Plaintiffs Christopher Castagna's and Gavin Castagna's claims set forth in Count III (M.G.L. c. §§ 11H and 11I), Count V (false imprisonment), and Count IX (intentional infliction of emotional distress) are dismissed;

c. Judgment is entered in favor of Defendant Harry Jean as to Plaintiff Christopher Castagna's claims set forth in Count VI (assault and battery), Count VII (false arrest), and Count VIII (malicious prosecution)); and

d. Judgment is entered in favor of Plaintiffs Christopher Castagna and Gavin Castagna in the amount of $1 each as to the 42 U.S.C. § 1983 unlawful entry claim, and in favor of Defendant Harry Jean as to all remaining claims set forth in Count I (42 U.S.C. § 1983).

5. As to Defendant Anthony Troy:

a. Plaintiff Christopher Castagna's claim set forth in Count VIII (malicious prosecution) is dismissed;

b. Plaintiffs Christopher Castagna's and Gavin Castagna's claims set forth in Count III (M.G.L. c. §§ 11H and 11I), Count V (false imprisonment), and Count IX (intentional infliction of emotional distress) are dismissed; and

c. Judgment is entered in favor of Defendant Anthony Troy as to all remaining claims asserted by Plaintiff Christopher Castagna (Count I (42 U.S.C. § 1983), Count VI (assault and battery), and Count VII (false arrest)), and by Plaintiff Gavin Castagna (Count I (42 U.S.C. § 1983), Count VI (assault and battery), Count VII (false arrest), and Count VIII (malicious prosecution)).

6. As to Defendant Jay Tully:

a. Plaintiff Christopher Castagna's claim set forth in Count VIII (malicious prosecution) is

dismissed;

b. Plaintiffs Christopher Castagna's and Gavin Castagna's claims set forth in Count III (M.G.L. c. §§ 11H and 11I), Count V (false imprisonment), and Count IX (intentional infliction of emotional distress) are dismissed; and

c. Judgment is entered in favor of Defendant Jay Tully as to all remaining claims asserted by Plaintiff Christopher Castagna (Count I (42 U.S.C. § 1983), Count VI (assault and battery), and Count VII (false arrest)), and by Plaintiff Gavin Castagna (Count I (42 U.S.C. § 1983), Count VI (assault and battery), Count VII (false arrest), and Count VIII (malicious prosecution)).

7. As to Defendant Kamau Pritchard:

a. Plaintiff Christopher Castagna's claim set forth in Count VIII (malicious prosecution) is dismissed;

b. Plaintiffs Christopher Castagna's and Gavin Castagna's claims set forth in Count III (M.G.L. c. §§ 11H and 11I), Count V (false imprisonment), and Count IX (intentional infliction of emotional distress) are dismissed; and

c. Judgment is entered in favor of Defendant Kamau Pritchard as to all remaining claims asserted by Plaintiff Christopher Castagna (Count I (42 U.S.C. § 1983), Count VI (assault and battery), and Count VII in (false arrest)), and by Plaintiff Gavin Castagna (Count I (42 U.S.C. § 1983), Count VI (assault and battery), Count VII in (false arrest), and Count VIII (malicious prosecution)).

8. As to Defendant Michael Bizzozero:

a. Plaintiff Gavin Castagna's claim set forth in Count VIII (malicious prosecution) is dismissed;

b. Plaintiffs Christopher Castagna's and Gavin Castagna's claims set forth in Count III (M.G.L. c. §§ 11H and 11I), Count V (false imprisonment), and Count IX (intentional infliction of emotional distress) are dismissed; and

c. Judgment is entered in favor of Defendant Michael Bizzozero as to all remaining claims asserted by Plaintiff Christopher Castagna (Count I (42 U.S.C. § 1983), Count VI (assault and battery), Count VII (false arrest), and Count VIII (malicious prosecution)), and by Plaintiff Gavin Castagna (Count I (42 U.S.C. § 1983)).

IT IS SO ORDERED.

Date: June 28, 2019

/s/ Indira Talwani
United States District Judge