APPENDIX

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.

Before Lynch and Kayatta,

Circuit Judges.

ORDER OF COURT

Entered: July 2, 2021

Christopher and Gavin Castagna seek recall of the mandate in this case. We have inherent authority to recall a mandate in "extraordinary circumstances." Calderon v. Thompson, 523 U.S. 538, 549 (1998). Few cases present such circumstances. See Kashner Davidson Sec. Corp. v. Mscisz, 601 F.3d 19, 22 n.4 (1st Cir. 2010) (collecting cases). "The sparing use of the power demonstrates it is one of last resort, to be held in reserve against grave, unforeseen contingencies." Calderon, 523 U.S. at 549. The Castagnas have not come close to meeting their burden.

In the decision the Castagnas seek to revisit, we held that three Boston police officers were entitled to qualified immunity when, without a warrant, they entered the open door to Christopher Castagna's apartment after observing apparently underage drinkers exiting the premises. Castagna v. Jean, 955 F.3d 211, 214-15, 222-24 (1st Cir. 2020). We reached this conclusion because at the time of the search, "there was no clearly established law that the officers' entrance into the apartment fell outside of the scope of the community caretaking exception" to the Fourth Amendment's warrant exception. Id. We cited a number of cases predating the search that held such searches were in fact lawful. Id. at 223 (citing 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); United States v. York, 895 F.2d 1026, 1029-30 (5th Cir. 1990)); see also MacDonald v. Town of Eastham, 745 F.3d 8, 14 (1st Cir. 2014) (holding that officers who entered home under community caretaking exception were entitled to qualified immunity because unlawfulness of conduct was not clearly established).

The Supreme Court's decision in Caniglia v. Strom, 141 S. Ct. 1596 (2021), which held that police officers may not always enter a home without a warrant to engage in community caretaking functions, id. at 1599-1600, does not alter our holding. To defeat the officers' assertion of qualified immunity, the Castagnas must show that the officers' conduct was clearly established as unlawful in 2013. See District of Columbia v. Wesby, 138 S. Ct. 577, 589 (2018). "Clearly established means that, at the time of the officer's conduct, the law was sufficiently clear that every reasonable official would understand that what he is doing is unlawful." Id. (quoting Ashcroft v. al-Kidd, 563 U.S. 731, 735 (2011) (quotation marks omitted). "The precedent must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply. Otherwise, the rule is not one that 'every reasonable official' would know." Id. (citation omitted). As controlling authority in this Circuit establishes, in 2013 there was no clearly established rule preventing the officers from entering the apartment. See MacDonald, 745 F.3d at 14.

The Castagnas have not shown that our decision was erroneous, much less demonstrated their entitlement to extraordinary relief. The motion is denied.

By the Court:

Maria R. Hamilton, Clerk

cc:
Benjamin L. Falkner
James B. Krasnoo
Paul Joseph Klehm
Nicole Marie O'Connor
Erika Paula Reis
Katherine Nowland Galle

APPENDIX B

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 firstfloor 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

[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.

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 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 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

[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.

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.

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

[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.

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 C

Castagna v. Jean

United States Court of Appeals, First Circuit.

April 10, 2020

No. 19-1677

955 F.3d 211*: 2020 U.S. App. LEXIS 11357**;
2020 WL 1815968

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.

Synopsis

Background: Homeowner brought § 1983 action against law enforcement officers, alleging unlawful entry in violation of the Fourth Amendment, arising from officers' warrantless entry of his home during a party. After a jury found in officers' favor, homeowner moved for new trial. The United States District Court for the District of Massachusetts, Indira Talwani, J., 361 F.Supp.3d 171, granted the motion.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS [Hon. Indira Talwani, U.S. District Judge]

Attorneys and Law Firms

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

Before Lynch, Stahl, and Kayatta, Circuit Judges.

Opinion

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, 105 S.Ct. 2806, 86 L.Ed.2d 411 (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

[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.

and keep everything 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

[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

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 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

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music was turned off or merely down when they initially entered the apartment. We assume arguendo the music was turned off.

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.

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

[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.

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 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

[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.

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]

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

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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 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.

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 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

[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.

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 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

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

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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 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.

community caretaking exception would not give them an immunity defense.[9]

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

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[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 it applied here, the District Court should not have permitted Plaintiffs to proceed further against Defendants. White v. Pauly, —— U.S. —— —, 137 S. Ct. 548, 551, 196 L.Ed.2d 463 (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.

'clearly established at the time.' " Eves v. LePage, 927 F.3d 575, 582-83 (1st Cir. 2019) (en banc) (quoting District of Columbia v. Wesby, —— U.S. ——, 138 S. Ct. 577, 589, 199 L.Ed.2d 453 (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, —— U.S. ——, 137 S. Ct. 548, 551, 196 L.Ed.2d 463 (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, 132 S.Ct. 2088, 182 L.Ed.2d 985 (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, 131 S.Ct. 2074, 179 L.Ed.2d 1149 (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, 132 S.Ct. 2088), 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, 119 S.Ct. 1692, 143 L.Ed.2d 818 (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, 118 S.Ct. 1584, 140 L.Ed.2d 759 (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, 100 S.Ct. 1371, 63 L.Ed.2d 639 (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, 93 S.Ct. 2523, 37 L.Ed.2d 706 (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, 93 S.Ct. 2523. 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, 93 S.Ct. 2523. 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, 133 S.Ct. 1409, 185 L.Ed.2d 495 (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 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

[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.

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, 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

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[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.

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

[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.

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 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.2d 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, 93 S.Ct. 2523), 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 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.

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

Hyland, 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 D

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

MANDATE

Entered: May 1, 2020

In accordance with the judgment of April 10, 2020, and pursuant to Federal Rule of Appellate Procedure 41(a), this constitutes the formal mandate of this Court.

By the Court:

Maria R. Hamilton, Clerk

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

APPENDIX E

Castagna v. Jean

Supreme Court of the United States

December 7, 2020, Decided

No. 20-253.

2020 U.S. LEXIS 5899*; 141 S. Ct. 896; 208 L. Ed. 2d 452; 89 U.S.L.W. 3192; 2020 WL 7132271

Christopher Castagna, et al.,
Petitioners

v.

Harry Jean, et al.

Judges: Roberts, Thomas, Breyer, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh, Barrett.

Opinion

Petition for writ of certiorari to the United States Court of Appeals for the First Circuit denied.

APPENDIX F

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

June 17, 2021

TALWANI, D.J.

Before the court is Plaintiffs Christopher Castagna and Gavin Castagna's Motion for Relief from Judgment as to § 1983 Wrongful Entry Claim [#339]. Plaintiffs seek to vacate the Second Amended Judgment [#335] entered in Defendants' favor and to restore the vacated Amended Judgment [#325] which awarded Plaintiffs nominal damages on their Unlawful Entry claim under 42 U.S.C. § 1983. Plaintiffs contend relief is warranted in light of the United States Supreme Court's decision in Caniglia v. Strom, 593 U.S. ___, 141 S.Ct. 1596 (2021). Defendants oppose the Motion [#339], stating that "the appropriate court to entertain Plaintiffs' motion" is the United States Court of Appeals for the First Circuit and that Plaintiffs' motion must be denied

because this court "lacks jurisdiction in this matter." Opposition 3 [#341]. Defendants argue further that they are entitled to qualified immunity. Id.

The court recounts the procedural history in Section I below. The court DENIES Plaintiffs' Motion [#339] for the reasons set forth in Section II below. The court sets forth in Case 1:15-cv-14208-IT Document 343 Filed 06/17/21 Page 1 of 9 2 Section III an indicative ruling in the event that the First Circuit recalls its mandate, vacates its opinion, and remands for further proceedings in this court in light of Caniglia v. Strom, 593 U.S. ___, 141 S.Ct. 1596 (2021).

I. PROCEDURAL HISTORY

Plaintiffs brought this action against numerous Boston Police Officers who entered Plaintiffs' home and Plaintiff Christopher Castagna's bedroom, broke up Plaintiffs' Saint Patrick's Day party, and arrested Plaintiffs. Prior to trial, the court dismissed most of the Defendants and narrowed the claims as to the remaining three Defendants, Officers Daran Edwards, Harry Jean, and Keith Kaplan. At trial, Plaintiffs pursued these remaining claims, including an unlawful entry claim under 42 U.S.C. § 1983. Over Defendants' objection, the court declined to instruct the jury on a community caretaking exception to the warrant requirement. Defendants timely filed motions for judgment as a matter of law at the close of Plaintiffs' case and at the close of all evidence, in which they argued that their entry into both the apartment and the bedroom was justified by a community caretaking exception to the warrant requirement, and protected by qualified immunity. Defendants' Motions for Judgment as a Matter of Law [#275], [#278]. The jury decided in favor of the Defendants on all counts, including the Unlawful

Entry count, see Jury Verdict [#284], and the court denied Defendants' Motions for Judgment as a Matter of Law [#275], [#278] as moot. Elec. Order [#289].

Plaintiffs subsequently moved for a new trial on multiple grounds, Motion for a New Trial [#292], and the court granted the motion. Mem. & Order at 11 [#305]. Viewing the parties' dispute as to the community caretaking exception to be a dispute of law, the court discussed with counsel how they could tee up the legal issue for appellate review without the expense and delay of another trial. Counsel suggested cross-motions for summary judgment based on the trial record, see Status Report [#308], while the court invited Rule 52 motions. See Elec. Order [#310]. In accordance with the court's suggestion, Plaintiffs sought judgment as a matter of law as to liability, and Defendant moved for a ruling that Plaintiff failed to prove damages beyond nominal damages. Elec. Clerk's Notes [#311]. The court granted both motions, Elec. Orders [#312], [#324], and entered the Amended Judgment [#325], with judgment for Defendants on all counts except the § 1983 unlawful entry claim, judgment in favor of the Plaintiffs as to the § 1983 unlawful entry claim, and an award to Plaintiffs of one dollar in nominal damages from each of the three officers.

Defendants appealed, and the First Circuit reversed. Opinion of the Court of Appeals [#333]. The Court of Appeals explained that

> [t]his year, after the district court in this case issued its decision, [the Court of Appeals] held that the community caretaking exception could be used to justify police officers' entry into homes as well [as cars] . . . . 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 19 (quoting Caniglia v. Strom, 953 F.3d 112, 123-24 (1st Cir. 2020) (internal citations omitted)). The Court of Appeals proceeded to find that Defendants were entitled to qualified immunity for the unlawful entry claim because Defendants were performing a community caretaking function of making sure underage guests were safe, and remanded the matter for this court to enter judgment for the Defendants. Id. at 20-21; Judgment of the United States Court of Appeals for the First Circuit [#334]. Accordingly, on May 1, 2020, the court entered the Second Amended Judgment [#335].

II. THE PENDING MOTION

Because the mandate issued from the First Circuit and this court issued the final judgment that Plaintiffs now seek to have vacated, Plaintiffs properly initiated their request for relief in this court.

Plaintiffs seek relief under Federal Rule of Civil Procedure 60(b)(6). "A motion under Rule 60(b)(6) must be made within a reasonable time." Fed. R. Civ. P. 60(c)(1). The court finds the Motion [#339] is timely. Plaintiffs filed this Motion [#339] on June 1, 2021, thirteen months after entry of judgment and within two weeks of the Supreme Court's decision in Caniglia. Defendants have argued no prejudice caused by the timing of the Motion [#339].

Rule 60(b)(6) allows a court to relieve a party from a final judgment for "any other reason that justifies relief." This subsection "provides federal district courts with a residual reservoir of equitable power to grant discretionary relief from a final

judgment . . . where such relief is appropriate to accomplish justice, but the reasons for that relief are not encompassed by the other provisions of the rule." Paul Revere Variable Annuity Ins. Co. v. Zang, 248 F.3d 1, 5 (1st Cir. 2001) (internal citations and quotations omitted). Such relief, however, is "'extraordinary relief' reserved for 'exceptional circumstances,' given the countervailing interest in the finality of such orders." Id. (quoting United States v. One Urban Lot, 882 F.2d 582, 585 (1st Cir. 1989)). "Ordinarily, a change in decisional law is not considered an 'extraordinary circumstance' justifying relief from judgment." O'Callaghan v. Shirazi, 204 F. App'x 35, 36 (1st Cir. 2006) (per curiam) (citing United States ex rel. Garibaldi v. Orleans Parish Sch. Bd., 397 F.3d 334, 337–38 (5th Cir. 2005) (Supreme Court decision clarifying law and resolving circuit split was not an "extraordinary circumstance" justifying relief under Rule 60(b)); Blue Diamond Coal Co. v. Trustees of UMWA Combined Benefit Fund, 249 F.3d 519, 524–25 (6th Cir. 2001) (notwithstanding change in decisional law, equity favored denial of Rule 60(b)(6) motion, given the amount of time that had passed since final judgment; reliance of parties upon that judgment; and public policy favoring finality of judgments)).

Here, however, the appellate decision vacated by the Supreme Court, Caniglia v. Strom, 953 F.3d 112 (1st Cir. Mar. 13, 2020), was issued by the First Circuit nine months after this court entered its Amended Judgment [#325]. The First Circuit's Opinion [#333] then explicitly "appl[ied] the analysis in Caniglia and [held] that the officers' entry was justified under the community caretaking exception to the warrant requirement." Castagna, 955 F.3d at

221. In these extraordinary circumstances, relief may be considered under Rule 60(b)(6).

Whether relief is in fact warranted requires consideration of the merits previously addressed by the First Circuit. However, because "the mandate of an appellate court forecloses the lower court from reconsidering matters determined in the appellate court," Diaz v. Jiten Hotel Mgmt., Inc., 741 F.3d 170, 175 (1st Cir. 2013) (quoting Biggins v. Hazen Paper Co., 111 F.3d 205, 209 (1st Cir. 1997) (internal quotation marks omitted)), this court may not reconsider the First Circuit's decision. For this reason, the Motion [#339] is DENIED.

III. INDICATIVE RULINGS

The pending Motion [#339] does not fall directly within Federal Rule of Appellate Procedure 12.1(a) and Federal Rule of Civil Procedure 62.1, as no appeal is currently pending. In light of Plaintiffs' Notice [#342] that they have also filed a Motion to Recall Mandate, to Stay Ruling on Within Motion Pending Ruling on Rule 60(b) Motion, and to Set Deadline to File Petition for Rehearing with the First Circuit, and anticipating the likelihood Plaintiffs will appeal this court's denial of their Rule 60(b)(6) motion, the court sets forth the following indicative ruling should the matter be remanded.

If the matter is remanded for further proceedings in light of Caniglia v. Strom, 593 U.S. ___, 141 S.Ct. 1596 (2021), the court anticipates vacating the Second Amended Judgment [#335] but not reinstating its Amended Judgment [#325]. Instead, the court would proceed as follows.

A. Plaintiffs' Motion for a New Trial [#292]

Following the jury verdict, Plaintiffs sought a new trial. On such a motion, the movants are not seeking a judgment contrary to the jury's verdict. Instead, they are seeking an opportunity to retry the case. Accordingly, the court may not only "weigh the evidence" but must also consider whether "action is required in order to prevent injustice." Jennings v. Jones, 587 F.3d 430, 436 (1st Cir. 2009) (internal citation and quotation omitted). The court therefore "may order a new trial 'even where the verdict is supported by substantial evidence.'" Id. at 439 (quoting Lama v. Borras, 16 F.3d 473, 477 (1st Cir. 1994)). Indeed, "the district court 'has the power and duty to order a new trial whenever, in its judgment, the action is required in order to prevent injustice.'" Kearns v. Keystone Shipping Co., 863 F.2d 177, 181 (1st Cir. 1988) (quoting 11 C. Wright & A. Miller, § 2805). And, when the court so orders, the non-movant is not deprived of a jury's determination of the facts, but only of this particular jury's determination. The remedy of a new trial thus affords relief to prevent injustice to one party "without abrogating his opponent's right to a jury trial." Insurance Co. of N. Am. v. Musa, 785 F.2d 370, 375 (1st Cir. 1986).

Here, the court rejected Defendants' request to give an instruction on a community caretaking exception; the Supreme Court's ruling in Caniglia v. Strom, 593 U.S. ___, 141 S.Ct. 1596 (2021), that police officers' "caretaking duties" do not create "a standalone doctrine that justifies warrantless searches and seizures in the home," is in accord with the court's rejection of the community caretaking exception instruction. Despite being properly instructed, the jury found no constitutional violation. That finding was against the weight of the evidence

and resulted in a serious miscarriage of justice. In this court's view, the jury's failure to follow the court's proper instruction on the Fourth Amendment to the Constitution warranted a new trial.

Defendants opposed Plaintiffs' Motion for a New Trial [#292] on qualified immunity grounds. But the qualified immunity doctrine does not allow the court to ignore a jury's miscarriage of justice. Instead, the court should have considered qualified immunity separately on Defendants' motion. Accordingly, on remand, the court would again grant Plaintiffs' Motion for a New Trial [#292] for the reasons set forth in the court's Memorandum and Order [#303] except as it addresses qualified immunity.

B. Defendants' Motions for Judgment [#275], [#278]

Defendants raised qualified immunity in their Motions for Judgment [#275], [#278]. The court denied those motions as moot after the jury entered a defense verdict. Elec. Order [#289]. Once the court vacated the jury verdict, however, the court should have reconsidered those motions and resolved the question of qualified immunity based on the evidence presented at trial. In that context, the court would view the evidence in the light most favorable to the Plaintiffs, the nonmoving party. Casco, Inc. v. John Deere Construction & Forestry Company, 990 F.3d 1, 7 (1st Cir. 2021). The evidence would be viewed as follows:

> 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 [ ] anyone tried to run or hide from the officers to avoid 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.

Mem. & Order 5-6 [#305].

When the facts are viewed in the light most favorable to the nonmoving party, they do not support qualified immunity. To paraphrase the First Circuit's decision in Matalon v. Hynnes,

> the contours of both the [Plaintiffs'] right to enjoy the sanctity of [their] home and the heartland of the community caretaking exception were sufficiently clear to alert [the officers] that [their] plan of action—a

> warrantless entry—would infringe the [Plaintiffs'] constitutional rights. Put another way, an objectively reasonable officer should have known that a warrantless entry into the [Plaintiffs'] home [to have music turned down] could not be effected on the basis of the community caretaking exception.

806 F.3d 627, 635 (1st Cir. 2015).

Accordingly, the court would deny the Defendants' Motions for Judgment as a Matter of Law [#275], [#278].

C. Plaintiffs' Motion for Judgment as to Liability

After granting the motion for a new trial, the court viewed the dispute between the parties as primarily a dispute of law (whether the community caretaking exception applied to the home or only to cars) rather than a dispute of fact. The court encouraged Plaintiffs to move for judgment as to liability in order to allow for review of that legal issue. Elec. Order [#310]. But in granting Plaintiffs' oral motion under Federal Rule of Civil Procedure 52 and entering judgment, see Elec. Orders [#312], [#324]; Amended Judgment [#325], the court deprived Defendants of a jury to determine what Defendants were doing when they entered the Plaintiffs' home. Quite simply, there was a factual dispute that should have gone to the jury as to whether the Defendants entered the home to have the music turned down or whether they entered the home to protect against underage drinking as their lawyers claim.

Accordingly, the court would deny Plaintiffs' motion for judgment as to liability so the jury could resolve this factual dispute.

D. Defendants' Motion to Limit Damages to Nominal Damages

The court would, however, leave in place its order limiting damages on the Unlawful Entry claim to nominal damages. Plaintiffs presented no evidence to support a claim of damages based on the officers' entry into Plaintiffs' home or Plaintiff Christopher Castagna's bedroom.

Instead, the evidence of damage offered at trial all related to subsequent events, including the intervening actions of Plaintiffs and their guests.

IV. CONCLUSION

For the foregoing reasons, this court DENIES Plaintiffs' Motion for Relief from Judgment as to § 1983 Wrongful Entry Claim [#339] and sets forth its indicative rulings in the event that the First Circuit grants Plaintiffs relief and remands the matter to this court for further proceedings.

IT IS SO ORDERED.

Date: June 17, 2021

/s/ Indira Talwani
United States District Judge

APPENDIX G

No. 19-1677

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

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

PLAINTIFFS' MOTION TO RECALL MANDATE, TO STAY RULING ON WITHIN MOTION PENDING RULING ON RULE 60(b) MOTION, AND TO SET DEADLINE TO FILE PETITION FOR REHEARING

INTRODUCTION

Plaintiffs Christopher Castagna and Gavin Castagna (hereinafter, the "Castagnas") hereby move this Court to recall the mandate issued in this matter on May 1, 2020, and to set a deadline for the Castagnas to file a petition for rehearing, in light of the May 17, 2021 United States Supreme Court decision in the matter of *Caniglia v. Strom*, 593 U.S. ____, 141 S. Ct. 1596 (2021), a copy of which is attached hereto as **Exhibit A**. In *Caniglia*, the Supreme Court held that the community caretaking exception established in *Cady v. Dombrowski*, 413 U.S. 433 (1973) has never applied to homes, but only to cars; the Supreme Court thereby reversed the finding of this Circuit in *Caniglia v. Strom*, 953 F.3d 112 (1st Cir. 2020), upon which this Court relied in finding against the Castagnas in the within matter on their §1983 wrongful entry claims (based upon the entry of police officers into a home). *Caniglia*, 593 U.S. at _____.

On June 1, 2021, pursuant to Fed. R. Civ. P. 60(b)(6) and in light of the recent Supreme Court decision in *Caniglia*, the Castagnas filed Plaintiffs' Motion for Relief from Judgment as to §1983 Wrongful Entry Claim (hereinafter, the "Rule 60(b) motion") in the United States District Court for the District of Massachusetts. (Civil Action No. 15-cv-14208-IT, [Doc. No. 339]). In the Rule 60(b) motion, the Castagnas sought relief from the judgment against them on the wrongful entry claim, and, further, the restoration of the judgment for nominal damages in favor of the Castagnas, and against the Defendants Daran Edwards, Harry Jean and Keith Kaplan (hereinafter, the "Defendants"), on that claim. The filing of a Rule 60(b) motion in the District Court was proper in accordance with *Standard Oil Co. v.*

United States, 429 U.S. 17, 17 (1976), in which the Supreme Court held, in essence, that a party may file a Rule 60(b) motion without first filing a motion to recall the mandate at the appellate level.

On June 11, 2021, the Defendants filed an opposition to the Rule 60(b) motion in the District Court. [Doc. No. 341]. In the opposition, Defendants allege, without citation, that the District Court lacks jurisdiction over the Rule 60(b) motion because, according to the Defendants, the motion should be brought in this Court. [Doc. No. 341, pp. 2-3].

The Rule 60(b) motion remains pending, and the Castagnas respectfully request that this Court stay issuing a ruling on the within motion until such time as the District Court has ruled on the Rule 60(b) motion.

Out of an abundance of caution, and finding an absence of guiding precedent for this unusual circumstance, the Castagnas file the within motion requesting that this Court both recall the mandate and establish the deadline for the Castagnas to petition for a rehearing in the within matter pursuant to Fed. R. App. P. 40(a)(1) to the extent that the First Circuit did not reach certain questions of law in reaching its decision. Additionally, the Castagnas respectfully request that this Court issue a new mandate requiring the District Court to enter judgment in favor of the Castagnas, and against the Defendants, for nominal damages on the Castagnas' §1983 wrongful entry claims.

I. Facts[1]

This case arose out of a gathering of friends at Christopher Castagna's home in South Boston on St.

[1] The facts are gleaned from this Court's opinion, 955 F.3d 211.

Patrick's Day in 2013. *Castagna*, 955 F.3d at 214. Just before 6 p.m. that evening, a 911 caller reported a loud party at the intersection where Christopher lived. *Id.* Approximately 1.5 hours later, the Boston police dispatched several officers, including, without limitation, the Defendants, to respond to the call. *Id.*

At approximately 7:38 p.m., seven officers arrived, and, at that time, Christopher's apartment was the only place with any sign of a party. *Id.* Kaplan heard screaming, music and talking from the apartment. *Castagna*, 955 F.3d at 214. He also saw some people leave the party, and he believed that one may have gone back into the apartment to warn others. *Id.* Kaplan thought that the people looked underage. *Id.* Kaplan could see into the home because the door was open, and he could also see through a window that people were drinking inside. *Id.* Edwards also heard loud music, and, he saw people who appeared to be underage drinking. *Castagna*, 955 F.3d at 214-215.

Officer Jean, who arrived later, saw through the window that some people were drinking, some of whom appeared to be underage. *Id.* at 215. Jean saw a male stumble onto the sidewalk outside and vomit, before going back into the apartment. *Id.* At the apartment door, Kaplan yelled hello several times and announced: "Boston Police." *Id.* Hearing no response, he then walked into the apartment. *Id.* According to the officers, he entered the home to locate the homeowner and have the volume of the music lowered and to make sure that any underage drinkers, including the person who vomited, were safe. *Castagna*, 955 F.3d at 215.

The police then entered through the open door into the kitchen, where some of the guests were

dancing. *Id.* The guests did not respond to the officers immediately, but eventually they turned down the music and spoke with Kaplan. *Id.*

II. The Relevant Procedural History

On June 11, 2018, an eight-day jury trial began on the Castagnas' various claims, which included, among others, a §1983 wrongful entry claim. During the trial, the District Court (Talwani, J.) excluded a community caretaking exception defense, although the Court permitted the Defendants to argue that exception in the context of qualified immunity.

The jury found for the Defendants on all counts. [Doc. No. 284].

On January 17, 2019, the District Court granted Plaintiffs' motion for new trial as to the wrongful entry claims against Edwards, Kaplan and Jean, finding that the weight of evidence did not "demonstrate that Defendants Kaplan, Edwards and Jean's entry into Christopher Castagna's home falls within an exception to the Fourth Amendment warrant requirement." [Doc. No. 305, p. 11]. The District Court found that "[i]n the 45 years since *Cady [v. Dombrowski*, 413 U.S. 433 (1973)], 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." [Doc. No. 305, p. 7]. In rejecting Defendants' argument that the search was appropriate under the community caretaker exception, the District Court found that the "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." [Doc. No. 305, p. 8].

On the issue of qualified immunity, the District Court held that

> 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).

[Doc. No. 305, p. 11].

The District Court later entered an Amended Judgment in favor of the Plaintiffs on the unlawful entry claims for nominal damages. [Doc. Nos. 325]

The Defendants appealed that judgment. [Doc. No. 327]. On April 10, 2020, this Court, relying upon *Caniglia*, reversed. *Castagna*, 955 F.3d at 225. As to the first prong of the qualified immunity test, this Court found that the officers were permitted to enter the home through the open door without violating the Castagnas' constitutional rights. *Id.* at 220. As this Court wrote, "[t]his 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 officer's entry into homes as well." *Id.*,

citing Caniglia, 953 F.3d at 124. According to this Court, Edwards, Jean and Kaplan were performing a community caretaking function when entering the home. *Castagna*, 955 F.3d at 221.

As to the second prong of the qualified immunity test, this Court found that, at the time of the 2013 St. Patrick's Day incident, the law was not clearly established. *Castagna*, 955 F.3d at 222. This Court, citing to *MacDonald v. Town of Eastham*, 745 F.3d 8 (1st Cir. 2014), wrote that "[t]here was no consensus of persuasive authority at the time of the officers' entry that the community caretaking exception could only apply to automobile searches." *Castagna*, 955 F.3d at 223. The officers, this Court wrote, could not have known that "their actions would clearly violate the Castagnas' constitutional rights." *Id.* at 224-225.

In the decision, this Court wrote that it did not reach the Defendants' arguments (1) that they were entitled to qualified immunity because their entry fell within the emergency aid exception, (2) that the Castagnas strategically elected not to bring a motion for judgment as a matter of law, or (3) that the District Court erroneously found that the verdict was against the law or weight of credible evidence. *Castagna*, 955 F.3d at 218, n. 7-8.

On April 10, 2020, this Court entered judgment in this matter, reversing the District Court's judgment for the Castagnas and remanding the matter to the District Court to enter judgment for Defendants Daran Edwards, Harry Jean and Keith Kaplan.

On May 1, 2020, this Court issued a mandate.

On April 28, 2020, the Castagnas filed a timely Petition for Writ of Certiorari to the United States Supreme Court.

On November 20, 2020, the United States Supreme Court granted the Petition for Writ of Certiorari in the *Caniglia* matter. *Caniglia v. Strom*, ___ U.S. ___, 141 S. Ct. 870 (2020).

On December, 7, 2020, the Supreme Court denied the Castagnas' Petition for Writ of Certiorari. *Castagna v. Jean*, ___ U.S. ___, 141 S. Ct. 896 (2020).

On May 17, 2021, the Supreme Court decided *Caniglia v. Strom*, 593 U.S. ____, 141 S. Ct. 1596 (2021). Justice Thomas, writing for the Court, noted that the Fourth Amendment prohibits only unreasonable intrusions on private property. He found that "[t]he First Circuit's 'community caretaking' rule, however, goes beyond anything this Court has recognized." *Id.*, 593 U.S. at ___ (slip op. at 6). While *Cady*, like Caniglia, involved the search for a firearm without a warrant, in *Cady*, the search was an impounded vehicle – "a constitutional difference that the opinion repeatedly stressed." *Caniglia*, 593 U.S. at ____ (slip op. at 7), *Cady*, 413 U.S. at 439-442 (quotations omitted). *Cady* makes an "unmistakable distinction between vehicles and homes…," which this Court ignored when it applied *Cady's* community caretaking functions to homes. *See Caniglia*, 593 U.S. at ___ (slip op. at 7). While police officers often need to provide assistance to people in motor vehicles, "this recognition that police officers perform many civic tasks in modern society was just that – a recognition that these tasks exist, and not an open-ended license to perform them anywhere." *Id.*

In vacating the judgment, Justice Thomas wrote that "this Court has repeatedly 'declined to

expand the scope of … exceptions to the warrant requirement to permit warrantless entry into the home.'" *Id, quoting Collins v. Virginia*, 584 U.S. ___, 138 S. Ct. 1663, 1672 (2018) (slip op. at 7- 8). In other words, because, ever since *Cady* was decided in 1973, it has never been the case that the community caretaking exception applied to homes, qualified immunity does not protect the Defendants.

In the Supreme Court, a petition for rehearing must be filed within 25 days of the date of the decision (here, May 17, 2021) "unless the Court or a Justice shortens or extends the time." (*See* Supreme Court Rule 44.1). From a docket search of the *Caniglia* matter on the Supreme Court's website, no such petition for rehearing, or motion to extend the time for filing such a petition, appears to have been timely filed (unless there is a delay in docketing). https://www.supremecourt.gov/search.aspx?filename =/docket/docketfiles/html/public/20- 157.html (last checked June 16, 2021).

III. Argument

Circuit Courts have "inherent power to recall their mandates, subject to a review for an abuse of discretion." *Calderon v, Thomson*, 523 U.S. 538, 549-550, 140 L. Ed 2d 728, 118 S. Ct. 1489 (1998). This Court may only exercise that power upon a demonstration of "extraordinary circumstances." *See e.g. United States v. Fraser*, 407 F.3d 9, 10 (1st Cir. 2005), quoting *Calderon* 523 U.S. at 550. "If a situation arose, such as a subsequent decision by the Supreme Court, which showed that our original judgment was demonstrably wrong, a motion to recall mandate might be entertained." *Legate v. Maloney*, 348 F.2d 164, 166 (1st Cir. 1965); *see Boston & Me. Copr. v. Town of Hampton*, 7 F.3d 281, 283 (1st Cir.

1993). The case of *In re Union Nacional de Trabajadores*, 527 F.2d 602 (1st Cir. 1975) is instructive. In that case, this Court had ordered a jury trial in criminal contempt proceedings. *Id.* at 603. Before the jury trial took place, the Supreme Court issued a decision in *Muniz v. Hoffman*, 419 U.S. 992, 42 L. Ed. 2d 264, 95 S. Ct. 302 (1974), finding that there was no right to a jury trial in such proceedings. On a petition for rehearing and request to recall the mandate, this Court issued a per curiam decision recalling the mandate, "as our original decision was demonstrably wrong and created manifest injustice." *In re Union Nacional de Trabajadores*, 527 F.2d at 604.

Here, as the Supreme Court noted, this Court went "beyond anything this Court has recognized," and pointed out that *Cady* made an "unmistakable distinction between vehicles and homes." *Caniglia*, 593 U.S. at _____. This Court's decision in Castagna v. Jean, based upon *Caniglia*, was decided only one month after *Caniglia*. In both *Caniglia* an *Castagna*, this Court wrongly applied the community caretaking exception, and incorrectly found that, even so, qualified immunity barred the unlawful entry claim because it was not clearly established at the time of the events in question (2013 in *Castagna* and 2015 in *Caniglia*) that the community caretaking exception would not permit the warrantless entry into the home. *Castagna*, 955 F.3d at 222; *Caniglia*, 953 F.3d at 134. The Supreme Court opinion expressly refutes this Court's finding that the law was not clearly established in 2013, as the Supreme Court opinion demonstrates that the *Cady* opinion from its inception established clearly that the community caretaking exception was limited expressly to automobiles. This Court's decision, respectfully, was wrong.

The Defendants will suffer no prejudice from the allowance of the within motion. The community caretaking exception was litigated thoroughly and should have been resolved in favor of the Castagnas under Supreme Court precedent. Presumably, in the event that the mandate is recalled, this Court will consider the three issues noted above which this Court did not reach on a rehearing.

Where the Defendants unlawfully entered the Castagna home without a warrant, and without any other constitutional basis for doing so, fairness dictates that the mandate be recalled, and that the matter be heard on a petition for rehearing so that the qualified immunity issue and the three issues not reached previously by this Court may be addressed. The Castagnas having done all that they could to protect their rights timely against the Defendants' baseless claims that they were acting properly under the community caretaking function, justice demands the recall of the mandate. To leave this Court's decision as is would constitute a manifest injustice, as, under the Supreme Court precedent, the officers should never have entered the Castagna home.

In the event that the Court recalls the mandate, the Castagnas request that this Court permit the Castagnas to file a petition for rehearing to address the qualified immunity issue and the three remaining issues. Such a petition is normally due within 14 days after the entry of judgment. Fed. R. App. P. 40(a)(1). Here, though, the *Caniglia* Supreme Court decision was not issued until more than a year after this Court issued a mandate. To the extent a petition for rehearing is required, the Castagnas respectfully request that the time within which they may file such a petition be extended to and including

a date thirty days after this Court recalls the mandate.

As noted above, though, given the pendency of a Rule 60(b) motion at the District Court, the Castagnas respectfully request that this Court stay issuing a ruling on this motion until such time as the District Court has ruled on the Rule 60(b) motion, so as to avoid any potential confusion and/or inconsistent rulings.

WHEREFORE, for the above reasons, Plaintiffs Christopher Castagna and Gavin Castagna respectfully request that this Court GRANT the within motion and:

1. Stay issuing a ruling on the within motion until such time as the District Court has ruled on the pending Rule 60(b) motion;
2. Recall the mandate issued on May 1, 2020;
3. Extend the time for the Castagnas to file a petition for a rehearing in the within matter pursuant to Fed. R. App. P. 40(a)(1) to and including a date thirty days after this Court recalls the mandate;
4. Issue a new mandate requiring the District Court to enter judgment in favor of the Castagnas, and against the Defendants, for nominal damages on the Castagnas' §1983 wrongful entry claims; and

5. Grant such other relief as may be meet and just.

The Plaintiffs,
Christopher Castagna and
Gavin Castagna
By Their Attorneys,

/s/ Paul J. Klehm
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Dated: June 16, 2021

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants via first class mail, postage prepaid, on June 16, 2021. On June 16, 2021, I am also serving a copy of the within motion upon Erika P. Reis, Esq., City of Boston Law Department, City Hall, Room 615, Boston, MA 02201 via email and first class mail, postage prepaid.

/s/ Paul J. Klehm
Paul J. Klehm

EXHIBIT A

Caniglia v. Strom

Supreme Court of the United States

March 24, 2021, Argued; May 17, 2021, Decided

No. 20-157

Edward A. CANIGLIA, Petitioner

v.

Robert F. STROM, et al.

Synopsis

Background: Detainee, who was taken by police officers from his home to a hospital for a psychiatric evaluation, brought § 1983 action against city and the officers, alleging the officers violated the Fourth Amendment when they entered his home and seized him and his firearms without a warrant. The United States District Court for the District of Rhode Island, John J. McConnell, Chief Judge, 396 F.Supp.3d 227, granted summary judgment to city and officers. Detainee appealed. The United States Court of Appeals for the First Circuit, Selya, Circuit Judge, 953 F.3d 112, affirmed. Certiorari was granted.

THOMAS, J., delivered the opinion for a unanimous Court. ROBERTS, C. J., filed a concurring opinion, in which BREYER, J., joined. ALITO, J., and KAVANAUGH, J., filed concurring opinions.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Attorneys and Law Firms

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Marc Desisto, Counsel of Record, Michael A. Desisto, Rebecca Tedford Partington, Kathleen M. Daniels, Desisto Law LLC, Providence, RI, Jonathan A. Herstoff, Haug Partners LLP, New York, NY, for Respondents.

Opinion

Justice THOMAS delivered the opinion of the Court.

Decades ago, this Court held that a warrantless search of an impounded vehicle for an unsecured firearm did not violate the Fourth Amendment. *Cady v. Dombrowski*, 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973). In reaching this conclusion, the Court observed that police officers who patrol the "public highways" are often called to discharge noncriminal "community caretaking functions," such as responding to disabled vehicles or investigating accidents. *Id.*, at 441, 93 S.Ct. 2523. The question today is whether *Cady*'s acknowledgment of these "caretaking" duties creates a standalone doctrine that justifies warrantless searches and seizures in the home. It does not.

I

During an argument with his wife at their Rhode Island home, Edward Caniglia (petitioner) retrieved a handgun from the bedroom, put it on the dining room table, and asked his wife to "shoot [him] now and get

it over with." She declined, and instead left to spend the night at a hotel. The next morning, when petitioner's wife discovered that she could not reach him by telephone, she called the police (respondents) to request a welfare check.

Respondents accompanied petitioner's wife to the home, where they encountered petitioner on the porch. Petitioner spoke with respondents and confirmed his wife's account of the argument, but denied that he was suicidal. Respondents, however, thought that petitioner posed a risk to himself or others. They called an ambulance, and petitioner agreed to go to the hospital for a psychiatric evaluation—but only after respondents allegedly promised not to confiscate his firearms. Once the ambulance had taken petitioner away, however, respondents seized the weapons. Guided by petitioner's wife—whom they allegedly misinformed about his wishes—respondents entered the home and took two handguns.

Petitioner sued, claiming that respondents violated the Fourth Amendment when they entered his home and seized him and his firearms without a warrant. The District Court granted summary judgment to respondents, and the First Circuit affirmed solely on the ground that the decision to remove petitioner and his firearms from the premises fell within a "community caretaking exception" to the warrant requirement. *Caniglia v. Strom*, 953 F.3d 112, 121–123, 131 and nn. 5, 9 (2020). Citing this Court's statement in *Cady* that police officers often have noncriminal reasons to interact with motorists on "public highways," 413 U.S. at 441, 93 S.Ct. 2523, the First Circuit extrapolated a freestanding community-caretaking exception that applies to both cars and homes. 953 F.3d at 124 ("Threats to individual and

community safety are not confined to the highways"). Accordingly, the First Circuit saw no need to consider whether anyone had consented to respondents' actions; whether these actions were justified by "exigent circumstances"; or whether any state law permitted this kind of mental-health intervention. *Id.,* at 122–123. All that mattered was that respondents' efforts to protect petitioner and those around him were "distinct from 'the normal work of criminal investigation,' " fell "within the realm of reason," and generally tracked what the court viewed to be "sound police procedure." *Id.,* at 123–128, 132–133. We granted certiorari. 592 U.S. ——, 141 S.Ct. 870, 208 L.Ed.2d 436 (2020).

II

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The "'very core'" of this guarantee is "'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'" *Florida v. Jardines*, 569 U.S. 1, 6, 133 S.Ct. 1409, 185 L.Ed.2d 495 (2013).

To be sure, the Fourth Amendment does not prohibit all unwelcome intrusions "on private property," *ibid.*—only "unreasonable" ones. We have thus recognized a few permissible invasions of the home and its curtilage. Perhaps most familiar, for example, are searches and seizures pursuant to a valid warrant. See *Collins v. Virginia*, 584 U.S. ——, —— – ——, 138 S.Ct. 1663, 1670–71, 201 L.Ed.2d 9 (2018). We have also held that law enforcement officers may enter private property without a warrant when certain exigent circumstances exist, including the need to "'render emergency assistance to an

injured occupant or to protect an occupant from imminent injury.'" *Kentucky v. King*, 563 U.S. 452, 460, 470, 131 S.Ct. 1849, 179 L.Ed.2d 865 (2011); see also *Brigham City v. Stuart*, 547 U.S. 398, 403–404, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006) (listing other examples of exigent circumstances). And, of course, officers may generally take actions that " 'any private citizen might do' " without fear of liability. *E.g., Jardines*, 569 U.S. at 8, 133 S.Ct. 1409 (approaching a home and knocking on the front door).

The First Circuit's "community caretaking" rule, however, goes beyond anything this Court has recognized. The decision below assumed that respondents lacked a warrant or consent, and it expressly disclaimed the possibility that they were reacting to a crime. The court also declined to consider whether any recognized exigent circumstances were present because respondents had forfeited the point. Nor did it find that respondents' actions were akin to what a private citizen might have had authority to do if petitioner's wife had approached a neighbor for assistance instead of the police.

Neither the holding nor logic of *Cady* justified that approach. True, *Cady* also involved a warrantless search for a firearm. But the location of that search was an impounded vehicle—not a home—" 'a constitutional difference' " that the opinion repeatedly stressed. 413 U.S. at 439, 93 S.Ct. 2523; see also *id.,* at 440–442, 93 S.Ct. 2523. In fact, *Cady* expressly contrasted its treatment of a vehicle already under police control with a search of a car "parked adjacent to the dwelling place of the owner." *Id.*, at 446–448, 93 S.Ct. 2523 (citing *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971)).

Cady's unmistakable distinction between vehicles and homes also places into proper context its reference to "community caretaking." This quote comes from a portion of the opinion explaining that the "frequency with which ... vehicle[s] can become disabled or involved in ... accident[s] on public highways" often requires police to perform noncriminal "community caretaking functions," such as providing aid to motorists. 413 U.S. at 441, 93 S.Ct. 2523. But, this recognition that police officers perform many civic tasks in modern society was just that—a recognition that these tasks exist, and not an open-ended license to perform them anywhere.

* * *

What is reasonable for vehicles is different from what is reasonable for homes. *Cady* acknowledged as much, and this Court has repeatedly "declined to expand the scope of ... exceptions to the warrant requirement to permit warrantless entry into the home." *Collins*, 584 U.S., at ——, 138 S.Ct. at 1672. We thus vacate the judgment below and remand for further proceedings consistent with this opinion.

It is so ordered.

Concur by: Roberts; Alito; Kavanaugh

Chief Justice ROBERTS, with whom Justice BREYER joins, concurring.

Fifteen years ago, this Court unanimously recognized that "[t]he role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties." *Brigham City v. Stuart*, 547 U.S. 398, 406, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006). A warrant to enter a home is not required, we explained, when there is a "need to assist persons who are seriously injured or threatened with such injury."

Id., at 403, 126 S.Ct. 1943; see also *Michigan v. Fisher*, 558 U.S. 45, 49, 130 S.Ct. 546, 175 L.Ed.2d 410 (2009) (*per curiam*) (warrantless entry justified where "there was an objectively reasonable basis for believing that medical assistance was needed, or persons were in danger" (internal quotation marks omitted)). Nothing in today's opinion is to the contrary, and I join it on that basis.

Justice ALITO, concurring.

I join the opinion of the Court but write separately to explain my understanding of the Court's holding and to highlight some important questions that the Court does not decide.

1. The Court holds—and I entirely agree—that there is no special Fourth Amendment rule for a broad category of cases involving "community caretaking." As I understand the term, it describes the many police tasks that go beyond criminal law enforcement. These tasks vary widely, and there is no clear limit on how far they might extend in the future. The category potentially includes any non-law-enforcement work that a community chooses to assign, and because of the breadth of activities that may be described as community caretaking, we should not assume that the Fourth Amendment's command of reasonableness applies in the same way to everything that might be viewed as falling into this broad category.

The Court's decision in *Cady v. Dombrowski*, 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973), did not recognize any such "freestanding" Fourth Amendment category. See *ante*, at 1598 – 1599, 1599 – 1600. The opinion merely used the phrase "community caretaking" in passing. 413 U.S. at 441, 93 S.Ct. 2523.

2. While there is no overarching "community caretaking" doctrine, it does not follow that all searches and seizures conducted for non-law-enforcement purposes must be analyzed under precisely the same Fourth Amendment rules developed in criminal cases. Those rules may or may not be appropriate for use in various non-criminal-law-enforcement contexts. We do not decide that issue today.

3. This case falls within one important category of cases that could be viewed as involving community caretaking: conducting a search or seizure for the purpose of preventing a person from committing suicide. Assuming that petitioner did not voluntarily consent to go with the officers for a psychological assessment,[1] he was seized and thus subjected to a serious deprivation of liberty. But was this warrantless seizure "reasonable"? We have addressed the standards required by due process for involuntary commitment to a mental treatment facility, see *Addington v. Texas*, 441 U.S. 418, 427, 99 S.Ct. 1804, 60 L.Ed.2d 323 (1979); see also *O'Connor v. Donaldson*, 422 U.S. 563, 574–576, 95 S.Ct. 2486, 45 L.Ed.2d 396 (1975); *Foucha v. Louisiana*, 504 U.S. 71, 75–77, 83, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992), but we have not addressed Fourth Amendment restrictions on seizures like the one that we must assume occurred here, *i.e.*, a short-term seizure conducted for the purpose of ascertaining whether a person presents an imminent risk of suicide. Every State has laws allowing emergency seizures for

[1] The Court of Appeals assumed petitioner's consent was not voluntary because the police allegedly promised that they would not seize his guns if he went for a psychological evaluation. 953 F.3d 112, 121 (CA1 2020). The Court does not decide whether this assumption was justified.

psychiatric treatment, observation, or stabilization, but these laws vary in many respects, including the categories of persons who may request the emergency action, the reasons that can justify the action, the necessity of a judicial proceeding, and the nature of the proceeding.[2] Mentioning these laws only in passing, petitioner asked us to render a decision that could call features of these laws into question. The Court appropriately refrains from doing so.

4. This case also implicates another body of law that petitioner glossed over: the so-called "red flag" laws that some States are now enacting. These laws enable the police to seize guns pursuant to a court order to prevent their use for suicide or the infliction of harm on innocent persons. See, *e.g.,* Cal. Penal Code Ann. §§ 18125–18148 (West Cum. Supp. 2021); Fla. Stat. § 790.401(4) (Cum. Supp. 2021); Mass. Gen. Laws Ann., ch. 140, § 131T (2021). They typically specify the standard that must be met and the procedures that must be followed before firearms may be seized. Provisions of red flag laws may be challenged under the Fourth Amendment, and those cases may come before us. Our decision today does not address those issues.

5. One additional category of cases should be noted: those involving warrantless, nonconsensual searches of a home for the purpose of ascertaining whether a resident is in urgent need of medical attention and cannot summon help. At oral argument, THE CHIEF JUSTICE posed a question that highlighted this problem. He imagined a situation in which neighbors

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[2] See Brief for Petitioner 38–39, n. 4 (gathering state authorities); L. Hedman et al., State Laws on Emergency Holds for Mental Health Stabilization, 67 Psychiatric Servs. 579 (2016).

of an elderly woman call the police and express concern because the woman had agreed to come over for dinner at 6 p.m., but by 8 p.m., had not appeared or called even though she was never late for anything. The woman had not been seen leaving her home, and she was not answering the phone. Nor could the neighbors reach her relatives by phone. If the police entered the home without a warrant to see if she needed help, would that violate the Fourth Amendment? Tr. of Oral Arg. 6–8.

Petitioner's answer was that it would. Indeed, he argued, even if 24 hours went by, the police still could not lawfully enter without a warrant. If the situation remained unchanged for several days, he suggested, the police might be able to enter after obtaining "a warrant for a missing person." *Id.,* at 9.

THE CHIEF JUSTICE's question concerns an important real-world problem. Today, more than ever, many people, including many elderly persons, live alone.[3] Many elderly men and women fall in their homes,[4] or become incapacitated for other reasons, and unfortunately, there are many cases in which such persons cannot call for assistance. In those cases, the chances for a good recovery may fade with each

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[3] Dept. of Commerce, Bureau of Census, The Rise of Living Alone, Fig. HH–4 (2020), https://www.census.gov/content/dam/Census/ library /visualizations /time-series /demo /families-and-households /hh-4.pdf; Ortiz-Ospina, The Rise of Living Alone (Dec. 10, 2019), https://ourworldindata.org/living-alone; Smith, Cities With the Most Adults Living Alone (May 4, 2020), https://www.self.inc/blog/adults-living-alone.

[4] See B. Moreland, R. Kakara, & A. Henry, Trends in Nonfatal Falls and Fall-Related Injuries Among Adults Aged ≥65 Years—United States, 2012–2018, 69 Morbidity and Mortality Weekly Rep. 875 (2020).

passing hour.[5] So in THE CHIEF JUSTICE's imaginary case, if the elderly woman was seriously hurt or sick and the police heeded petitioner's suggestion about what the Fourth Amendment demands, there is a fair chance she would not be found alive. This imaginary woman may have regarded her house as her castle, but it is doubtful that she would have wanted it to be the place where she died alone and in agony.

Our current precedents do not address situations like this. We have held that the police may enter a home without a warrant when there are "exigent circumstances." *Payton v. New York*, 445 U.S. 573, 590, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). But circumstances are exigent only when there is not enough time to get a warrant, see *Missouri v. McNeely*, 569 U.S. 141, 149, 133 S.Ct. 1552, 185 L.Ed.2d 696 (2013); *Michigan v. Tyler*, 436 U.S. 499, 509, 98 S.Ct. 1942, 56 L.Ed.2d 486 (1978), and warrants are not typically granted for the purpose of checking on a person's medical condition. Perhaps States should institute procedures for the issuance of such warrants, but in the meantime, courts may be required to grapple with the basic Fourth Amendment question of reasonableness.

6. The three categories of cases discussed above are simply illustrative. Searches and seizures conducted for other non-law-enforcement purposes may arise and may present their own Fourth Amendment issues. Today's decision does not settle those questions.

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[5] See, *e.g.,* J. Gurley, N. Lum, M. Sande, B. Lo, & M. Katz, Persons Found in Their Homes Helpless or Dead, 334 New Eng. J. Med. 1710 (1996).

In sum, the Court properly rejects the broad "community caretaking" theory on which the decision below was based. The Court's decision goes no further, and on that understanding, I join the opinion in full.

Justice KAVANAUGH, concurring.

I join the Court's opinion in full. I write separately to underscore and elaborate on THE CHIEF JUSTICE's point that the Court's decision does not prevent police officers from taking reasonable steps to assist those who are inside a home and in need of aid. See *ante,* at 1600 (ROBERTS, C. J., concurring). For example, as I will explain, police officers may enter a home without a warrant in circumstances where they are reasonably trying to prevent a potential suicide or to help an elderly person who has been out of contact and may have fallen and suffered a serious injury.

Ratified in 1791 and made applicable to the States in 1868, the Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." As the constitutional text establishes, the "ultimate touchstone of the Fourth Amendment is reasonableness." *Riley v. California*, 573 U.S. 373, 381, 134 S.Ct. 2473, 189 L.Ed.2d 430 (2014) (internal quotation marks omitted). The Court has said that a warrant supported by probable cause is ordinarily required for law enforcement officers to enter a home. See U.S. Const., Amdt. 4. But drawing on common-law analogies and a commonsense appraisal of what is "reasonable," the Court has recognized various situations where a warrant is not required. For example, the exigent circumstances doctrine allows officers to enter a home without a warrant in certain situations, including: to fight a fire and investigate its cause; to prevent the imminent destruction of evidence; to engage in hot pursuit of a fleeing felon or prevent a suspect's escape; to address a threat to the safety of law enforcement officers or the general public; to render emergency assistance to an injured

occupant; or to protect an occupant who is threatened with serious injury. See *Mitchell v. Wisconsin*, 588 U.S. ——, ——, 139 S.Ct. 2525, 2533, 204 L.Ed.2d 1040 (2019) (plurality opinion); *City and County of San Francisco v. Sheehan*, 575 U.S. 600, 612, 135 S.Ct. 1765, 191 L.Ed.2d 856 (2015); *Kentucky v. King*, 563 U.S. 452, 460, 462, 131 S.Ct. 1849, 179 L.Ed.2d 865 (2011); *Michigan v. Fisher*, 558 U.S. 45, 47, 130 S.Ct. 546, 175 L.Ed.2d 410 (2009) (*per curiam*); *Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006); *Minnesota v. Olson*, 495 U.S. 91, 100, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990); *Michigan v. Clifford*, 464 U.S. 287, 293, and n. 4, 104 S.Ct. 641, 78 L.Ed.2d 477 (1984) (plurality opinion); *Mincey v. Arizona*, 437 U.S. 385, 392–394, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978); *Michigan v. Tyler*, 436 U.S. 499, 509–510, 98 S.Ct. 1942, 56 L.Ed.2d 486 (1978); *United States v. Santana*, 427 U.S. 38, 42–43, 96 S.Ct. 2406, 49 L.Ed.2d 300 (1976); *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 298–299, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967); *Ker v. California*, 374 U.S. 23, 40–41, 83 S.Ct. 1623, 10 L.Ed.2d 726 (1963) (plurality opinion).

Over the years, many courts, like the First Circuit in this case, have relied on what they have labeled a "community caretaking" doctrine to allow warrantless entries into the home for a non-investigatory purpose, such as to prevent a suicide or to conduct a welfare check on an older individual who has been out of contact. But as the Court today explains, any such standalone community caretaking doctrine was primarily devised for searches of cars, not homes. *Ante,* at 1601 – 1602; see *Cady v. Dombrowski*, 413 U.S. 433, 447–448, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973).

That said, this Fourth Amendment issue is more labeling than substance. The Court's Fourth Amendment case law already recognizes the exigent circumstances doctrine, which allows an officer to enter a home without a warrant if the "exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Brigham City*, 547 U.S. at 403, 126 S.Ct. 1943 (internal quotation marks omitted); see also *ante,* at 1601 – 1602. As relevant here, one such recognized "exigency" is the "need to assist persons who are seriously injured or threatened with such injury." *Brigham City*, 547 U.S. at 403, 126 S.Ct. 1943; see also *ante,* at 1600 (ROBERTS, C. J., concurring). The Fourth Amendment allows officers to enter a home if they have "an objectively reasonable basis for believing" that such help is needed, and if the officers' actions inside the home are reasonable under the circumstances. *Brigham City*, 547 U.S. at 406, 126 S.Ct. 1943; see also *Michigan v. Fisher*, 558 U.S. at 47–48, 130 S.Ct. 546.

This case does not require us to explore all the contours of the exigent circumstances doctrine as applied to emergency-aid situations because the officers here disclaimed reliance on that doctrine. But to avoid any confusion going forward, I think it important to briefly describe how the doctrine applies to some heartland emergency-aid situations.

As Chief Judge Livingston has cogently explained, although this doctrinal area does not draw much attention from courts or scholars, "municipal police spend a good deal of time responding to calls about missing persons, sick neighbors, and premises left open at night." Livingston, Police, Community Caretaking, and the Fourth Amendment, 1998 U.

Chi. Leg. Forum 261, 263 (1998). And as she aptly noted, "the responsibility of police officers to search for missing persons, to mediate disputes, and to aid the ill or injured has never been the subject of serious debate; nor has" the "responsibility of police to provide services in an emergency." *Id.,* at 302.

Consistent with that reality, the Court's exigency precedents, as I read them, permit warrantless entries when police officers have an objectively reasonable basis to believe that there is a current, ongoing crisis for which it is reasonable to act now. See, *e.g., Sheehan*, 575 U.S. at 612, 135 S.Ct. 1765; *Michigan v. Fisher*, 558 U.S. at 48–49, 130 S.Ct. 546; *Brigham City*, 547 U.S. at 406–407, 126 S.Ct. 1943. The officers do not need to show that the harm has already occurred or is mere moments away, because knowing that will often be difficult if not impossible in cases involving, for example, a person who is currently suicidal or an elderly person who has been out of contact and may have fallen. If someone is at risk of serious harm and it is reasonable for officers to intervene now, that is enough for the officers to enter.

A few (non-exhaustive) examples illustrate the point.

Suppose that a woman calls a healthcare hotline or 911 and says that she is contemplating suicide, that she has firearms in her home, and that she might as well die. The operator alerts the police, and two officers respond by driving to the woman's home. They knock on the door but do not receive a response. May the officers enter the home? Of course.

The exigent circumstances doctrine applies because the officers have an "objectively reasonable basis" for believing that an occupant is "seriously injured or threatened with such injury." *Id.,* at 400, 403, 126 S.Ct. 1943; cf. *Sheehan*, 575 U.S. at 612, 135 S.Ct.

1765 (officers could enter the room of a mentally ill person who had locked herself inside with a knife). After all, a suicidal individual in such a scenario could kill herself at any moment. The Fourth Amendment does not require officers to stand idly outside as the suicide takes place.[1]

Consider another example. Suppose that an elderly man is uncharacteristically absent from Sunday church services and repeatedly fails to answer his phone throughout the day and night. A concerned relative calls the police and asks the officers to perform a wellness check. Two officers drive to the man's home. They knock but receive no response. May the officers enter the home? Of course.

Again, the officers have an "objectively reasonable basis" for believing that an occupant is "seriously injured or threatened with such injury." *Brigham City*, 547 U.S. at 400, 403, 126 S.Ct. 1943. Among other possibilities, the elderly man may have fallen and hurt himself, a common cause of death or serious injury for older individuals. The Fourth Amendment does not prevent the officers from entering the home and checking on the man's well-being.[2]

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[1] In 2019 in the United States, 47,511 people committed suicide. That number is more than double the number of annual homicides. See Dept. of Health and Human Servs., Centers for Disease Control and Prevention, D. Stone, C. Jones, & K. Mack, Changes in Suicide Rates—United States, 2018–2019, 70 Morbidity and Mortality Weekly Rep. 261, 263 (2021) (MMWR); Dept. of Justice, Federal Bureau of Investigation, Uniform Crime Report, Crime in the United States, 2019, p. 2 (2020).

[2] In 2018 in the United States, approximately 32,000 older adults died from falls. Falls are also the leading cause of injury for older adults. B. Moreland, R. Kakara, & A. Henry, Trends in Nonfatal Falls and Fall-Related Injuries Among Adults Aged ≥ 65 Years––United States, 2012–2018, 69 MMWR 875 (2020).

To be sure, courts, police departments, and police officers alike must take care that officers' actions in those kinds of cases are reasonable under the circumstances. But both of those examples and others as well, such as cases involving unattended young children inside a home, illustrate the kinds of warrantless entries that are perfectly constitutional under the exigent circumstances doctrine, in my view.

With those observations, I join the Court's opinion in full.