No. _____

Supreme Court of the United States

JUSTIN R. PAGE,
Petitioner

v.

COMMONWEALTH OF MASSACHUSETTS,
Respondent

Appendix to Petition for a Writ of Certiorari

Volume One

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March 2026

APPENDIX TABLE OF CONTENTS

Volume One

Volume Two

24-P-298 Appeals Court

COMMONWEALTH vs. JUSTIN PAGE.

No. 24-P-298.

Franklin. February 5, 2025. – May 13, 2025.

Present: Blake, C.J., Meade, & Englander, JJ.

Motor Vehicle, Firearms. Firearms. Evidence, Firearm. Narcotic Drugs. Controlled Substances. Search and Seizure, Motor vehicle. Practice, Criminal, Appeal, Motion to suppress, Plea. Rules of Criminal Procedure.

Indictments found and returned in the Superior Court Department on April 1, 2022.

A pretrial motion to suppress evidence was heard by Mark D. Mason, J., and conditional pleas of guilty were accepted by Karen Goodwin, J.

Edward Crane for the defendant.
Bethany C. Lynch, Assistant District Attorney, for the Commonwealth.

MEADE, J. Following his indictments on several firearm and drug-related charges, the defendant moved to suppress, in relevant part, items seized by the Greenfield police from a backpack located in his car, claiming that the warrantless

search of the backpack violated art. 14 of the Massachusetts Declaration of Rights and the Fourth Amendment to the United States Constitution. After an evidentiary hearing, the defendant's motion to suppress was denied on the basis that the warrantless search of the backpack was constitutional pursuant to the community caretaking exception.

Thereafter, the defendant entered into a conditional plea agreement, pursuant to Mass. R. Crim. P. 12 (b) (6), as appearing in 482 Mass. 1501 (2019), pleading guilty to count one, unlawful possession of a firearm as a prior offender, and count five, possession of a class A controlled substance (heroin) with intent to distribute, while reserving the right to appeal from the denial of his motion to suppress. We affirm the denial of the motion to suppress.

Background. "We recite the facts as found by the motion judge . . . ." Commonwealth v. Goncalves-Mendez, 484 Mass. 80, 81 (2020). Greenfield Police Department Deputy Chief William Gordon (Deputy Chief Gordon) has been a member of the Greenfield Police Department since 1993. His duties are largely administrative, and he last performed field work in 2008. On September 24, 2021, at approximately 5:30 P.M., Deputy Chief Gordon was at a Big Y Supermarket parking lot with his wife, Greenfield Police Department Officer Laura Gordon (Officer Gordon). Officer Gordon has been with the Greenfield Police

Department for approximately thirty years. Both Deputy Chief Gordon and Officer Gordon were off duty, going grocery shopping, and in plain clothes. They were traveling in an unmarked Greenfield police car equipped with a police radio. While pulling into the Big Y Supermarket parking lot, they heard a police broadcast that there was a person "down or semi-conscious" in a car in that parking lot, near the New Fortune Restaurant. There they saw a group of people standing next to the driver's side door of a car and drove up to the gathering. Inside, a person, later identified as the defendant, appeared to be passed out and slumped behind the steering wheel. The defendant was alone in the car.

Deputy Chief Gordon notified the police department dispatch that they were at the scene with the person. Officer Gordon got out of their car and approached the defendant's car; the defendant was pale white as if he was not breathing. Officer Gordon told Deputy Chief Gordon she believed the defendant was overdosing. Deputy Chief Gordon radioed to dispatch that the defendant was "nodding" and having difficulty breathing. Officer Gordon opened the driver's side car door, and Deputy Chief Gordon saw that the defendant appeared to be struggling with Officer Gordon.

Deputy Chief Gordon got out of his car to assist. A small group of people remained at the scene. Officer Brent Griffin

(Officer Griffin) arrived in uniform, and Deputy Chief Gordon stepped aside to permit Officer Griffin to assist.[1] The officers told the defendant that they were there to help him. The defendant was reaching for the steering wheel and Deputy Chief Gordon thought he might attempt to drive away. At the same time, the defendant was reaching for a backpack next to him. The officers repeatedly told the defendant to stop reaching for the backpack. The defendant ignored their orders, pulled away from Officers Gordon and Griffin, and continued to reach for the backpack and the car's controls.

Because the defendant was reaching for the steering wheel and the backpack, Deputy Chief Gordon believed there was a safety issue, and he attempted to open the front passenger's side door, but it was locked. The crowd in the parking lot was growing in number, and Deputy Chief Gordon's car had its blue lights activated. Officer Gordon unlocked the passenger's side door, and Deputy Chief Gordon retrieved the backpack from the car. At that point, he was not aware of any criminal wrongdoing and continued to believe the defendant was overdosing. Deputy Chief Gordon retrieved the backpack because medics had arrived

[1] The Greenfield Police Department's policy on off-duty officers provides that an off-duty officer who observes a crime being committed or a medical emergency should attempt to intervene. Once an on-duty officer arrives on scene, the off-duty officer is expected to yield to the on-duty officer.

on scene and he assumed it would travel with the defendant to the hospital.[2]

Deputy Chief Gordon opened the backpack for two purposes: first, to determine if it contained a weapon to ensure the safety of the public, the police, and the defendant; and second, to determine if it contained the defendant's identification. Inside the backpack, Deputy Chief Gordon found several small bags containing hard objects that he believed to be packets of heroin. At the bottom of the backpack, he found a knife, a pistol, and a large amount of cash. Once he discovered the weapons, Deputy Chief Gordon assumed the defendant had been reaching for the backpack to get a weapon. Accordingly, he instructed Officer Griffin to get the defendant out of the car and handcuff him.

Two additional officers arrived on scene, and they transported the defendant to the Greenfield Police Department for booking. At the police station, the defendant was twice provided his Miranda rights.[3] Thereafter, he admitted to

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[2] When the incident call first came in, the Greenfield Fire Department was called for medical assistance. Officer Griffin eventually determined there was no medical emergency and the Greenfield Fire Department medical team left. The medics did not ask the police to look for any information relating to the defendant.

[3] See Miranda v. Arizona, 384 U.S. 436, 471-473 (1966).

possession of the narcotics and to having taken the firearm from his mother.[4]

Discussion. 1. The conditional plea agreement. The defendant claims, for the first time on appeal, that we "should follow the bread crumbs laid out by the [United States] Supreme Court [in Caniglia v. Strom, 593 U.S. 194 (2021),] and rule that, under the Fourth Amendment, there is no community caretaking exception [for warrantless searches] that operates distinctly from the emergency aid exception." As a threshold matter, the Commonwealth contends that the defendant's constitutional challenge to the community caretaking exception exceeds the scope of the appellate claim that the defendant reserved in the conditional plea agreement, which had been executed pursuant to Mass. R. Crim. P. 12 (b) (6). Because of that, the Commonwealth claims that the argument is waived.[5] In the circumstances of this case, we disagree.

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[4] Although the defendant moved to suppress these statements, the motion judge did not address them, and the defendant does not challenge them on appeal.

[5] In general, "a plea of guilty by its terms waives all nonjurisdictional defects." Commonwealth v. Cabrera, 449 Mass. 825, 830-831 (2007), citing Garvin v. Commonwealth, 351 Mass. 661, 663-664, appeal dismissed, cert. denied, 389 U.S. 13 (1967). See United States v. Broce, 488 U.S. 563, 569 (1989) ("A plea of guilty and the ensuing conviction comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilt and a lawful sentence").

The Supreme Judicial Court first allowed the use of conditional plea agreements in Commonwealth v. Gomez, 480 Mass. 240, 240-241, 252 (2018), which prompted the addition of rule 12 (b) (6) to the Massachusetts Rules of Criminal Procedure in 2019, see Gomez, supra at 252. In relevant part, rule 12 (b) (6) states,

> "With the written agreement of the prosecutor, the defendant may tender a plea of guilty . . . while reserving the right to appeal any ruling or rulings that would, if reversed, render the Commonwealth's case not viable on one or more charges. The written agreement must specify the ruling or rulings that may be appealed, and must state that reversal of the ruling or rulings would render the Commonwealth's case not viable on one or more specified charges."

Mass. R. Crim. P. 12 (b) (6). In this case, the defendant's written conditional plea agreement reserved the following issue: "Defendant's Motion to Suppress held on February 7, 2023[,] and denied by [the motion judge] on February 10, 2023. Related to all charges on the indictment."

At issue in this appeal is, after reserving the right to appeal from an order denying a motion to suppress, what arguments may the defendant raise on appeal regarding that ruling. The Commonwealth contends that the defendant's reservation of the right to appeal from the denial of his motion to suppress is implicitly limited to the assertion of arguments

raised in the motion, which in this case did not include a constitutional challenge to the community caretaking exception.[6]

In light of the recency of the addition of rule 12 (b) (6), the Commonwealth supports its position with cases applying Fed. R. Crim. P. 11(a)(2), the Federal analogue to rule 12 (b) (6).[7] We may look to such cases for guidance.[8] See, e.g., Commonwealth v. Lampron, 441 Mass. 265, 269 (2004) ("it is appropriate to look to the Federal analogue of [Mass. R. Crim. P. 17 (a) (2), 378 Mass. 885 (1979)], on which our rule was modeled, for interpretive guidance").

As a general principle, the Commonwealth is correct: when a defendant reserves the right to appeal from a pretrial ruling in a conditional plea agreement, the scope of reserved arguments on appeal will ordinarily be limited to those raised below in

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[6] The defendant concedes in his reply brief that he did not make this argument in his motion to suppress.

[7] In relevant part, Fed. R. Crim. P. 11(a)(2) states, "With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion."

[8] While the Reporter's Notes to rule 12 (b) (6) do not state that Federal rule 11(a)(2) served as its model, the relevant text of each rule is substantively identical: both require that the conditional plea agreement specify the pretrial ruling or rulings being reserved for appeal, and neither provides further detail regarding the scope of appellate arguments that may be raised. See Mass. R. Crim. P. 12 (b) (6); Fed. R. Crim. P. 11(a)(2).

the applicable motion and motion hearing. See United States v. Doherty, 17 F.3d 1056, 1058 (7th Cir. 1994) ("[The defendant]'s 'conditional' plea . . . reserved the right to appeal only the denial of his motion to dismiss the indictment on the ground the motion had stated . . ."). See also United States v. Anderson, 374 F.3d 955, 958 (10th Cir. 2004) (adopting rule set forth in Doherty, supra).

However, where, as here, the motion judge's order relied on a legal doctrine that was not raised by the parties in connection with the motion to suppress, the scope of reserved arguments on appeal may include legal challenges to that doctrine and its application to the facts. See Anderson, 374 F.3d at 958 (improper pat-down argument waived because "[n]either the order nor [the defendant]'s motion to suppress evidence raised the improper-patdown argument" [emphasis added]); United States v. Ramos, 961 F.2d 1003, 1006 (1st Cir.), cert. denied, 506 U.S. 934 (1992), overruled en banc on other grounds by United States v. Caron, 77 F.3d 1 (1st Cir. 1996) (entrapment by estoppel argument waived because "[n]either th[e] motions nor the district court's Rulings and Memorandum of Decision nor the written plea agreement itself say anything about entrapment by estoppel" [emphasis added]).

We conclude, in the peculiar posture of this case, that the defendant's constitutional challenge to the community caretaking

exception falls within the scope of the conditional plea agreement. Although this challenge was not made in the motion to suppress, it was the basis of the judge's ruling. As such, it comports with the policy objective underpinning the requirement that conditional plea agreements specify the ruling or rulings that may be appealed: to "prevent entry of a conditional plea 'without the considered acquiescence of the government.'" United States v. Yasak, 884 F.2d 996, 999 (7th Cir. 1989), quoting Advisory Committee Notes to Fed. R. Crim. P. 11 (1983). See United States v. Carrasco, 786 F.2d 1452, 1454 n.3 (9th Cir. 1986), overruled en banc on other grounds by United States v. Jacobo Castillo, 496 F.3d 947 (9th Cir. 2007) ("Rule 11[a][2] represents . . . an insistence on unequivocal government acquiescence"). At the time the Commonwealth consented to the conditional plea agreement, it had notice of the motion judge's legal bases for the reserved ruling, including the invocation of a legal doctrine not raised by the parties.

A further supporting justification that makes it permissible for us to address the defendant's claim in this posture is that it presents a pure question of law. The constitutional challenge here does not require the resolution of any issues of fact that we would have otherwise treated as waived if they had not been raised at the motion to suppress

hearing. See Commonwealth v. Jones-Pannell, 472 Mass. 429, 438 (2015) (improper for appellate court to engage in independent fact finding); Commonwealth v. Lugo, 104 Mass. App. Ct. 309, 314 (2024) ("[o]ur appellate office does not equip us" to find facts or weigh evidence).

2. The community caretaking exception. The community caretaking exception to the warrant requirement finds its roots in Cady v. Dombrowski, 413 U.S. 433, 441 (1973). There, the United States Supreme Court "held that a warrantless search of an impounded vehicle for an unsecured firearm did not violate the Fourth Amendment." Caniglia, 593 U.S. at 196, citing Cady, supra. The Court remarked that "police officers who patrol the 'public highways' are often called to discharge noncriminal 'community caretaking functions.'" Caniglia, supra, quoting Cady, supra.

> "The community caretaking doctrine is applicable principally to a range of police activities involving motor vehicles, in which there are objective facts indicating that a person may be in need of medical assistance or some other circumstance exists apart from the investigation of criminal activity that supports police intervention to protect an individual or the public" (citations omitted).

Commonwealth v. Fisher, 86 Mass. App. Ct. 48, 51 (2014).

We turn to the merits of the defendant's argument.[9] The defendant claims that the community caretaking exception no

[9] Because the motion judge based his ruling on the community caretaking exception, and we disagree with the defendant's

longer exists under the Fourth Amendment in the aftermath of the Supreme Court's decision in Caniglia, 593 U.S. at 199. However, the defendant's attempted reassembly of the Caniglia breadcrumbs fails to create the constitutional loaf he envisioned the Court baking. Indeed, the Court framed its holding narrowly and established merely that the community caretaking exception does not extend to searches of a person's home. Id. at 196-199. Contrary to the defendant's suggestion, the Court did not eliminate in whole the community caretaking exception to the Fourth Amendment's warrant requirement, as it still applies to motor vehicles. See Commonwealth v. Regan, 104 Mass. App. Ct. 623, 624-626 (2024).

Alternatively, the defendant claims that Caniglia suggests that the community caretaking exception, if it exists at all, should be applied to a narrow set of circumstances. Specifically, the defendant contends that Cady only explicitly applies to inventory searches of impounded vehicles and gives no indication that the police may conduct a warrantless search of anything within a vehicle whenever they believe that the safety of the public is in jeopardy. Therefore, the defendant's argument follows, the community caretaking exception does not

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arguments regarding that exception, we do not address the applicability of the emergency aid exception as an alternative justification for Deputy Chief Gordon's warrantless search.

extend, as a matter of law, to the warrantless search of a person's backpack. We disagree.

The Supreme Judicial Court has not interpreted the scope of the exception to be so limited:

> "In carrying out [the community caretaking] function, an officer may, when the need arises, stop individuals and inquire about their well-being, even if there are no grounds to suspect that criminal activity is afoot. An officer may take steps that are reasonable and consistent with the purpose of his inquiry, even if those steps include actions that might otherwise be constitutionally intrusive" (emphasis added; citations omitted).

Commonwealth v. Knowles, 451 Mass. 91, 94-95 (2008). See Commonwealth v. Demos D., 105 Mass. App. Ct. 193, 196 (2025).

Here, the off-duty police officers responded to the unresponsive defendant in a car surrounded by a growing number of bystanders in a public parking lot. The defendant was nodding, and appeared pale white, as if he was not breathing. The officers believed the defendant was overdosing. When his car door was opened, the defendant regained some level of consciousness, struggled with the officers, became combative, and grabbed for the steering wheel in what might have been an attempt to drive away. At the same time, despite being repeatedly told not to, the defendant reached for the backpack next to him.

Based on what was occurring, Deputy Chief Gordon took and opened the backpack to determine if it contained a weapon to

ensure the safety of the nearby public and the police, and to determine if it held the defendant's identification. As the motion judge found, Deputy Chief Gordon's actions in opening and searching the backpack were necessary to address the ongoing medical and safety concerns. Indeed, an officer may take reasonable steps consistent with the purpose of his inquiry even if those steps may be constitutionally intrusive, e.g., searching for a weapon. See Knowles, 451 Mass. at 95. In any event, "[s]o long as the officer's conduct at the outset and throughout the course of exercising a community caretaking function is justified by the doctrine, the law does not attach significance to the officer's subjective motives." Fisher, 86 Mass. App. Ct. at 51. At the same time, while an officer performs a community caretaking function, he need not ignore contraband discovered in the process. See Commonwealth v. Swartz, 454 Mass. 330, 335 (2009); Commonwealth v. Murdough, 428 Mass. 760, 764-765 (1999).

Here, the Commonwealth met its burden of "demonstrating, by objective evidence, that the officer's actions were 'divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.'" Knowles, 451 Mass. at 95, quoting Cady, 413 U.S. at 441. The motion to suppress was properly denied.

Order denying motion to suppress affirmed.

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, ss.

SUPERIOR COURT
CRIMINAL ACTION
No. 2278CR00051

COMMONWEALTH

vs.

JUSTIN PAGE

DECISION AND ORDER ON DEFENDANT'S MOTION TO SUPPRESS

The defendant, Justin Page ("Mr. Page"), was indicted on charges of unlawful possession of a firearm, unlawful possession of a loaded firearm, use of a firearm in a felony, larceny of a firearm, and possession of a controlled substance with intent to distribute (Class A- heroin). Mr. Page now seeks to suppress items seized resulting from the search his motor vehicle, the backpack in his motor vehicle, and his subsequent statements made to the police.[1] For the reasons set forth below, Mr. Page's motion is to be *denied.*

A. Findings of Fact

Based upon the preponderance of the credible evidence adduced at hearing, I find as follows:

Greenfield Police Department Deputy Chief Wm. Gordon ("Deputy Chief Gordon") has been a member of the Greenfield Police Department since 1993. His duties are largely administrative, and he last performed field work in 2008. On September 24, 2021, at approximately 5:30 PM, Deputy Chief Gordon was at the Big Y Supermarket parking lot with

[1] At hearing, the defendant limited the suppression of his statements to the extent they constitute "fruit of the poisonous tree." See *Wong Sun* v. *United States,* 371 U.S. 471 (1963). He does not seek suppression of his statements pursuant to any theory set forth in *Miranda* v. *Arizona,* 384 U.S. 436 (1966).

his wife, Greenfield Police Department Officer Laura Gordon ("Officer Gordon"). Officer Gordon has been with Greenfield Police Department for approximately 30 years. Both Deputy Chief Gordon and Officer Gordon were off-duty, going grocery shopping, and in plain clothes. They were travelling in an unmarked Greenfield Police car with a police radio. While pulling into Big Y Supermarket parking lot, they heard over their police radio that there was a person down or semi-conscious in a car in the parking lot near the New Fortune Restaurant. They observed a group of people standing next to the driver's door of a motor vehicle. They drove up to the vehicle. Inside, an individual, later identified as defendant, appeared to be passed out and slumped behind the steering wheel. Defendant was alone in the motor vehicle.

Deputy Chief Gordon radioed that they had the person.[2] Officer Gordon exited her motor vehicle, approached the defendant's motor vehicle, and observed the defendant to be pale white as if he wasn't breathing. Officer Gordon told Deputy Chief Gordon she believed the defendant was overdosing. Deputy Chief Gordon radioed to dispatch that the defendant was "nodding" and having difficulty breathing. Officer Gordon opened the door to the motor vehicle and Deputy Chief Gordon observed that defendant appeared to be struggling with Officer Gordon. Officer Gordon went to the passenger side.

Deputy Chief Gordon exited his motor vehicle to assist. A small group of people remained at the scene. Officer Griffin arrived in uniform, and Deputy Chief Gordon stepped aside to permit Officer Griffin to assist. The officers told defendant that they were there to help him. Deputy Chief Gordon observed the defendant reaching for the steering wheel and thought he might attempt to drive away. At the same time, defendant was reaching for a backpack next to him. The officers repeatedly told defendant to stop reaching for the backpack. He ignored their

[2] The Greenfield Police Department's policy on off-duty officer self-activation provides that an off-duty officer who observes a crime being committed or a medical emergency should attempt to intervene. Once an on-duty officer arrives on scene, that officer is expected to yield to the on-duty officer.

orders, pulled away from Officer Gordon and Officer Griffin, and continued to reach for the backpack and the motor vehicle controls.

Because defendant was reaching for the steering wheel and the backpack, Deputy Chief Gordon believed there was a safety issue, and he attempted to open the passenger door, but it was locked. The crowd in the lot was growing and Deputy Chief Gordon had activated the blue lights in his vehicle. Officer Gordon was able to unlock the passenger door, and Deputy Chief Gordon took the backpack out of the motor vehicle. At that point, he was not aware of any criminal wrongdoing and continued to believe defendant was overdosing. Deputy Chief Gordon seized the backpack because medics had arrived on scene, and he assumed it would travel with the defendant to the hospital.

Deputy Chief Gordon opened the backpack for two purposes: first, to determine if it contained a weapon to ensure the safety of the public, the police, and the defendant; and second, to determine if it contained defendant's identification. Inside the backpack, Deputy Chief Gordon found several small bags containing hard objects which he observed to be packets of heroin. At the bottom of the backpack, he found a knife, a pistol, and a large amount of cash. Once he discovered the weapons, Deputy Chief Gordon assumed defendant had been reaching for the backpack to get the weapon. Accordingly, he instructed Officer Griffin to exit defendant from the motor vehicle and handcuff him. Two additional officers arrived on scene, and they transported defendant to the Greenfield Police Department for booking. The defendant was administered his *Miranda* rights twice at the police station. He admitted to possession of the narcotics and to having taken the firearm from his mother.

When the incident call first came in, the Greenfield Fire Department called for medical

assistance. Officer Griffin determined there was no medical emergency and the Greenfield Fire Department medical team left after Officer Griffin left the scene. The medics did not ask the police to look for any information relating to defendant.

B. Discussion

The Appeals Court recently addressed community caretaking functions in *Commonwealth* v. *Sargsyan*, 99 Mass. App. Ct 114 (2021). In *Sargsyan*, the Court stated:

> "Local police officers are charged with 'community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.'" *Commonwealth* v. *Evans*, 436 Mass. 369, 372 (2002), quoting *Cady* v. *Dombrowski*, 413 U.S. 433, 441 (1973). When performing this function, an officer may "stop individuals and inquire about their well-being, even if there are no grounds to suspect . . . criminal activity." *Commonwealth* v. *Knowles*, 451 Mass. 91, 94-95 (2008). The function applies "to a range of police activities involving motor vehicles . . . in which there are objective facts indicating that a person may be [in] need of medical assistance or some other circumstance exists apart from the investigation of criminal activity that supports police intervention to protect an individual or the public." *Commonwealth* v. *Fisher*, 86 Mass. App. Ct. 48, 51 (2014). Under the community caretakingfunction, an officer may, without reasonable suspicion of criminal activity, approach and detain citizens for community caretaking purposes. See *Commonwealth* v. *Lubiejewski*, 49 Mass. App. Ct. 212, 216 (2000). In addition, "[a]n officer may take steps that are reasonable and consistent with the purpose of his inquiry, . . . even if those steps include actions that might otherwise be constitutionally intrusive." *Knowles*, *supra* at 95."

Sargsyan at 116-117

1. The Stop/Exit Order/Detention

The police acted lawfully in approaching, exiting, and detaining defendant when they reasonably believed defendant may have been suffering from a drug overdose. There were objectively reasonable grounds for the officers to believe an emergency existed when they observed defendant pale and "nodding" behind the steering wheel in his motor vehicle. See *Sargsyan, supra,* at 116-117; *Commonwealth* v. *McCarthy,* 71 Mass. App. Ct. 591, 594 (2008). The facts in the within case are similar to those in *Commonwealth* v. *Murdough*, 428

Mass. 760 (1999). In *Murdough*, the court concluded that the officers, as part of their community caretaking functions, acted reasonably in requesting that the defendant get out of his vehicle where the defendant was found sleeping in the vehicle, and the officers had difficulty rousing the defendant. *Id.* at 761-762.

2. Seizure of the Backpack

The within case differs from *Commonwealth* v. *McCarthy*, 71 Mass. App. Ct. 591 (2008), upon which both parties rely. There, a police officer searched a defendant's handbag to determine what drugs a defendant had taken in circumstances where the police believed the defendant was suffering from a drug overdose. The Appeals Court concluded the officer's purpose in searching the handbag was to assist the defendant rather than with the purpose of securing evidence for a possible criminal trial. *Id.* at 593, citing *Commonwealth* v. *Bates*, 28 Mass. App. Ct. 217, 219 (1990); *Commonwealth* v. *Snell*, 428 Mass. 766, 774 (1999) As such, the search was deemed to be lawful.

Here, the scene was active. Deputy Chief Gordon believed that defendant was suffering from an overdose while defendant repeatedly attempted to grab the backpack and the steering wheel. Deputy Chief Gordon reasonably based his seizure of the backpack upon both the need to ascertain defendant's identity as well as for the safety of the public, the officers, and defendant. Under those circumstances, the seizure and opening of the backpack was lawful. "An officer may take steps that are reasonable and consistent with the purpose of his inquiry, . . . even if those steps include actions that might otherwise be constitutionally intrusive." *Commonwealth* v. *Knowles*, 451 Mass. at 95. "If an officer uncovers evidence of criminal activity while operating within the scope of this inquiry, it is admissible." *Id.*, citing *Commonwealth* v. *Leonard*, 422 Mass. 504, 509, cert. denied, 519 U.S. 877 (1996).

A noncoercive inquiry initiated for a community caretaking purpose may ripen into a seizure requiring constitutional justification. See *Commonwealth* v. *Mateo-German*, 453 Mass. 838, 842 (2009). There was an objective basis to believe that defendant's well-being or the safety of the public was in immediate jeopardy. An objective view of the facts reveals that the police were engaged in caretaking rather than a criminal investigation which was motivated by the search for evidence. The Commonwealth has met its burden of demonstrating, by objective evidence, that the officers' actions were "divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Cady* v. *Dombrowski*, 413 U.S. 433, 441 (1973).

C. Conclusion

In the circumstances of this case, the officers' actions fell within the scope of the community caretaking function and did not result in an unlawful seizure.

ORDER

For the reasons set forth above, Mr. Page's Motion to Suppress is **DENIED.**

MARK D MASON
Justice of the Superior Court

DATE: February 10, 2023
Entered: 02/13/2023

APPEALS COURT
Full Court Panel Case
Case Docket

COMMONWEALTH vs. JUSTIN R. PAGE
2024-P-0298

CASE HEADER

Case Status	Closed: Rescript issued
Status Date	10/17/2025
Nature	Crime: Possession of Gun
Entry Date	03/19/2024
Appellant	Defendant
Case Type	Criminal
Brief Status	
Brief Due	
Arg/Submitted	02/05/2025
Decision Date	05/13/2025
Panel	Blake, C.J., Meade, Englander, JJ.
Citation	105 Mass. App. Ct. 532
Lower Court	Franklin Superior Court
TC Number	
Lower Ct Judge	Mark D. Mason, J.
TC Entry Date	04/01/2022
SJ Number	
FAR Number	FAR-30359
SJC Number	

INVOLVED PARTY	ATTORNEY APPEARANCE
Commonwealth Plaintiff/Appellee Red brief & appendix filed 1 Enl, 53 Days	Matthew D. Thomas, A.D.A. Thomas H. Townsend, A.D.A. - Withdrawn Bethany C. Lynch, A.D.A.
Justin R. Page Defendant/Appellant Blue br, app & reply br filed 1 Enl, 56 Days	Edward Crane, Esquire

DOCUMENTS

Appellant Brief
Appellee Brief
Reply Brief

ORAL ARGUMENTS

0:00 / 0:00

DOCKET ENTRIES

Entry Date	Paper	Entry Text
03/19/2024		Transcript Volume: 01/06/2023 - Hearing .
09/18/2024		ADDITIONAL Transcript Volume: 02/07/2023 - Hearing.
09/18/2024		ADDITIONAL Transcript Volume: 10/04/2023 - Hearing.
03/19/2024	#1	Lower Court Assembly of the Record Package
03/19/2024	#2	Notice of entry sent.
03/21/2024	#3	Docketing Statement filed for Justin R. Page by Attorney Edward Crane.
04/02/2024		DAR-29754 opened on DAR APPLICATION filed by Justin Page.
04/16/2024	#4	Motion of Appellant to extend date for filing brief and appendix filed for Justin R. Page by Attorney Edward Crane.

04/17/2024		RE#4: Allowed to 6/24/24 Notice sent.
06/18/2024		DAR DENIED (on 06/18/2024).
06/20/2024	#5	Appellant brief filed for Justin R. Page by Attorney Edward Crane.
06/20/2024	#6	Appendix filed for Justin R. Page by Attorney Edward Crane.
07/18/2024	#7	MOTION of Appellee to extend brief due date filed for Commonwealth by Attorney Bethany Lynch.
07/18/2024		RE#7: Allowed to 09/13/2024. *Notice sent.
09/09/2024	#8	Appellee brief filed for Commonwealth by Attorney Bethany Lynch.
09/09/2024	#9	Appendix (Supplemental) filed for Commonwealth by Attorney Bethany Lynch.
09/09/2024	#10	Motion to Expand the Record filed for Commonwealth by Attorney Bethany Lynch.
09/11/2024		RE#10: Allowed. The trial court clerk's office shall transmit the 02/07/2023 and the 10/04/2023 transcripts to the Appeals Court clerk's office referencing the Appeals Court docket number (24-P-298). *Notice/Attest.
09/11/2024	#11	RESPONSE to #10 filed for Justin R. Page by Attorney Edward Crane.
09/11/2024	#12	Transcript 02/07/2023 Hearing filed for Justin R. Page by Attorney Edward Crane.
09/11/2024	#13	Transcript 10/04/2023 Hearing filed for Justin R. Page by Attorney Edward Crane.
09/18/2024	#14	Reply brief filed for Justin R. Page by Attorney Edward Crane.
11/19/2024		Notice sent seeking information on unavailability for oral argument in January 2025
11/20/2024	#15	Response from Bethany C. Lynch, A.D.A. re: unavailable for oral argument January 6, 13.
11/20/2024	#16	Response from Edward Crane, Esquire re: unavailable for oral argument January 6, 8. (Received 11/19/2024)
12/12/2024		Notice sent seeking information on unavailability for oral argument in February 2025
12/13/2024		Response from Edward Crane, Esquire re: available all dates for oral argument. (Received 12/12/24).
12/18/2024	#17	Response from Bethany C. Lynch, A.D.A. re: unavailable for oral argument February 3, 10. (Received 12/13/24).
01/02/2025	#18	Notice of 02/05/2025, 9:30 AM argument at Allan M. Hale (Rm Four) sent.
01/03/2025	#19	The notice remote oral argument was inadvertently issued on 1/2/25 and is withdrawn. Please reference the corrected notice of argument issued thereafter.
01/03/2025		Response from Edward Crane, Esquire re: will appear and argue on 02/05/2025.
01/06/2025		Response from Bethany C. Lynch, A.D.A. re: will appear and argue on 02/05/2025.
01/09/2025	#20	REVISED Notice of 02/05/2025, 9:30 AM argument at Allan M. Hale (Rm Four) sent. (Change of Panel)
01/10/2025		Response from Edward Crane, Esquire re: will appear and argue on 02/05/2025. (Received 01/09/25).
01/14/2025		Response from Bethany C. Lynch, A.D.A. re: will appear and argue on 02/05/2025.
02/05/2025		Oral argument held. (Blake, C.J., Meade, J., Englander, J).
02/06/2025	#21	Letter under MRAP 22(c) filed for Justin R. Page by Attorney Edward Crane.
05/13/2025	#22	Decision: Full Opinion (Meade, J.). Order denying motion to suppress affirmed. *Notice.
05/23/2025		FAR-30359 opened on FAR APPLICATION filed by Justin Page.
08/28/2025	#23	Notice of withdrawal as counsel filed for Commonwealth by Attorney Thomas H. Townsend.
10/16/2025		FAR DENIED (on 10/16/2025).
10/17/2025		RESCRIPT to Trial Court.
01/06/2026	#24	Letter from U.S. Supreme Court re: Extension of time for a petition for writ of certiorari

As of 01/06/2026 4:15pm

SUPREME JUDICIAL COURT
for the Commonwealth
Case Docket

COMMONWEALTH vs. JUSTIN R. PAGE
FAR-30359

CASE HEADER	
Case Status	FAR denied
Status Date	10/16/2025
Nature	Crime: Possession of Gun
Entry Date	05/23/2025
Appeals Ct Number	2024-P-0298
Response Date	06/06/2025
Appellant	Defendant
Applicant	
Citation	496 Mass. 1110
Case Type	Criminal
Full Ct Number	
TC Number	
Lower Court	Franklin Superior Court
Lower Ct Judge	Mark D. Mason, J.

INVOLVED PARTY	ATTORNEY APPEARANCE
Commonwealth Plaintiff/Appellee	Matthew D. Thomas, A.D.A. Thomas H. Townsend, A.D.A. Bethany C. Lynch, A.D.A.
Justin R. Page Defendant/Appellant	Edward Crane, Esquire

DOCKET ENTRIES

Entry Date	Paper	Entry Text
05/23/2025		Docket opened.
05/23/2025	#1	FAR APPLICATION filed for Justin Page by Attorney Edward Crane.
07/25/2025		FAR application deferred.
10/16/2025	#2	DENIAL of FAR application.

As of 10/22/2025 2:20pm

2278CR00051 Commonwealth vs. Page, Justin R

- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 04/01/2022
- DCM Track:
- A - Standard
- Initiating Action:
- FIREARM VIOL WITH 1 PRIOR VIOLENT/DRUG CRIME c269 §10G(a)
- Status Date:
- 04/21/2022
- Case Judge:
-
- Next Event:
-

All Information | Party | Charge | Event | Tickler | Docket | Disposition

Party Information

Franklin County District Attorney
- Prosecutor

Alias

Party Attorney
- Attorney
- Thomas, Esq., Matthew David
- Bar Code
- 643755
- Address
- District Attorney's Office
  One Gleason Plaza
  One Gleason Plaza
  Northampton, MA 01060
- Phone Number
- (413)437-5812

More Party Information

Page, Justin R
- Defendant

Alias

Party Attorney
- Attorney
- Crane, Esq., Edward
- Bar Code
- 679016
- Address
- 218 Adams St
  PO Box 220165
  Dorchester, MA 02122
- Phone Number
- (617)851-8404

More Party Information

Party Charge Information

- **Page, Justin R**
- - Defendant
  Charge # 1:
  269/10G/A-0 - Felony FIREARM VIOL WITH 1 PRIOR VIOLENT/DRUG CRIME c269 §10G(a)

- Original Charge
  - 269/10G/A-0 FIREARM VIOL WITH 1 PRIOR VIOLENT/DRUG CRIME c269 §10G(a) (Felony)
- Indicted Charge
  -
- Amended Charge
  -

Charge Disposition
Disposition Date
Disposition
10/04/2023
Guilty Plea

- **Page, Justin R**
- - Defendant
  Charge # 2:
  269/10/EE-0 - Felony FIREARM, CARRY WITHOUT LICENSE LOADED c269 s.10(n)

- Original Charge
- 269/10/EE-0 FIREARM, CARRY WITHOUT LICENSE LOADED c269 s.10(n) (Felony)
- Indicted Charge
-
- Amended Charge
-

Charge Disposition
Disposition Date
Disposition
10/04/2023
Nolle Prosequi

- **Page, Justin R**
- - Defendant
  Charge # 3:
  265/18B/A-3 - Felony FIREARM IN FELONY, POSSESS c265 §18B

- Original Charge
- 265/18B/A-3 FIREARM IN FELONY, POSSESS c265 §18B (Felony)
- Indicted Charge
-
- Amended Charge
-

Charge Disposition
Disposition Date
Disposition
10/04/2023
Nolle Prosequi

- **Page, Justin R**
- - Defendant
  Charge # 4:
  266/30/E-0 - Felony FIREARM, LARCENY OF c266 §30(1)

- Original Charge
- 266/30/E-0 FIREARM, LARCENY OF c266 §30(1) (Felony)
- Indicted Charge
-
- Amended Charge
-

Charge Disposition
Disposition Date
Disposition
10/04/2023
Nolle Prosequi

- **Page, Justin R**
- - Defendant
  Charge # 5:
  94C/32/C-1 - Felony DRUG, POSSESS TO DISTRIB CLASS A c94C §32(a)

- Original Charge
- 94C/32/C-1 DRUG, POSSESS TO DISTRIB CLASS A c94C §32(a) (Felony)
- Indicted Charge
-
- Amended Charge
-

Charge Disposition
Disposition Date
Disposition
10/04/2023
Guilty Plea

Events

Date	Session	Location	Type	Event Judge	Result
04/21/2022 02:00 PM	Criminal 1	Courtroom 4	Arraignment	Agostini, Hon. John A	Held as Scheduled

Date	Session	Location	Type	Event Judge	Result
08/30/2022 02:00 PM	Criminal 1	Courtroom 4	Pre-Trial Hearing		Rescheduled
10/25/2022 02:00 PM	Criminal 1	Courtroom 4	Pre-Trial Hearing	Callan, Hon. Michael K	Held as Scheduled
12/14/2022 02:00 PM	Criminal 1	Courtroom 4	Non-Evidentiary Hearing on Suppression	Goodwin, Hon. Karen	Rescheduled
01/06/2023 02:00 PM	Criminal 1	Courtroom 4	Non-Evidentiary Hearing on Suppression	Mason, Hon. Mark D	Held as Scheduled
01/27/2023 02:00 PM	Criminal 1	Courtroom 4	Trial Assignment Conference	Mason, Hon. Mark D	Held as Scheduled
02/07/2023 02:00 PM	Criminal 1	Courtroom 4	Evidentiary Hearing on Suppression	Mason, Hon. Mark D	Held - Under advisement
04/05/2023 02:00 PM	Criminal 1	Courtroom 4	Conference to Review Status	Agostini, Hon. John A	Held as Scheduled
05/26/2023 02:00 PM	Criminal 1	Courtroom 4	Hearing for Change of Plea	Hodge, Hon. David	Rescheduled
09/07/2023 02:00 PM	Criminal 1	Courtroom 4	Hearing for Change of Plea	McDonough, Jr., Hon. Edward J	Rescheduled
10/04/2023 02:00 PM	Criminal 1	Courtroom 4	Hearing for Change of Plea	Goodwin, Hon. Karen	Held as scheduled
11/01/2023 02:00 PM	Criminal 1	Courtroom 4	Hearing on Forfeitures	Goodwin, Hon. Karen	Held as Scheduled

Ticklers

Tickler	Start Date	Due Date	Days Due	Completed Date
Pre-Trial Hearing	04/01/2022	06/30/2022	90	10/25/2022
Final Pre-Trial Conference	04/01/2022	09/14/2022	166	10/04/2023
Case Disposition	04/01/2022	09/28/2022	180	10/04/2023
Review Appeals Filed	02/22/2024	03/22/2024	29	03/22/2024
Under Advisement	02/07/2023	03/09/2023	30	02/10/2023

Docket Information

Docket Date	*Docket Text*	File Ref Nbr.	*Image Avail.*
02/08/2014	General correspondence regarding Letter from CPCS regarding assignment of Attorney Crane to case for appeal.	24	Image
04/01/2022	Attorney appearance On this date 04/01/2022 Thomas, Esq., Matthew David added for Franklin County District Attorney		
04/01/2022	Case assigned to: DCM Track A - Standard was added on 04/01/2022		
04/01/2022	Indictment(s) returned	1	Image
04/11/2022	Habeas Corpus for defendant issued to Franklin County House of Correction returnable for 04/21/2022 02:00 PM Arraignment. CANCELLED - Defendant not held	2	Image
04/21/2022	Event Result:: Arraignment scheduled on: 04/21/2022 02:00 PM Has been: Held as Scheduled Comments: The Court appointed Attorney Isaac Mass, assessed a $150.00 LCF, and scheduled the matter for a PTH on 08/30/2022 at 02:00 pm and set bail, by agreement at $5,000.00 and the defendant received the new crime colloquy. The bail shall be transferred from the district court docket 2141CR00869. (Simanski, FTR, FCCtRm 4) Hon. John A Agostini, Presiding		
04/21/2022	Defendant arraigned before Court. Judge: Agostini, Hon. John A		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/21/2022	Colloquy - Defendant advised of right to attorney Judge: Agostini, Hon. John A		
04/21/2022	Defendant waives reading of indictment Judge: Agostini, Hon. John A		
04/21/2022	Plea of not guilty entered on all charges. Judge: Agostini, Hon. John A		
04/21/2022	Bail set at $0.00 Surety, $5,000.00 Cash. by agreement		
04/21/2022	Bail warnings read Judge: Agostini, Hon. John A		
04/21/2022	Order for the transmittal of Bail sent to the clerk of the Greenfield District Court.		
04/21/2022	Attorney appearance On this date Isaac Mass, Esq. added as Appointed - Indigent Defendant for Defendant Justin R Page Appointment made for the purpose of Case in Chief by Judge Hon. John A Agostini.		Image
04/22/2022	The following form was generated: Order for Transmittal of Bail Sent On: 04/22/2022 10:42:43		
04/25/2022	Probation Initial indigency report filed; Individual is indigent	3	*Image*
08/30/2022	Event Result:: Pre-Trial Hearing scheduled on: 08/30/2022 02:00 PM Has been: Rescheduled For the following reason: Joint request of parties Comments: The parties requested a further PTH date of 10/25/2022 at 02:00 pm. The Court ALLOWED the request. (Simanski, FTR, FC Ct rm 4, Hybrid). Hon. John A Agostini, Presiding		
09/30/2022	Probation 6 month Reassessment indigency report filed; Individual is indigent	5	*Image*
10/25/2022	Event Result:: Pre-Trial Hearing scheduled on: 10/25/2022 02:00 PM Has been: Held as Scheduled Comments: The parties requested the matter be placed on the February 2023 Criminal Trial List with a motion to suppress date of 12/14/2022 at 02:00 pm. The Court ALLOWED the requests. The Clerk's office shall obtain the PTC report from the parties. (Simanski, FTR, FCCtRm 4). Hon. Michael K Callan, Presiding		
11/08/2022	Defendant 's Motion to Suppress Evidence	6	Image
11/15/2022	Commonwealth 's Motion to Continue	7	Image
11/15/2022	Event Result:: Non-Evidentiary Hearing on Suppression scheduled on: 12/14/2022 02:00 PM Has been: Rescheduled For the following reason: Request of Commonwealth Comments: Defendant assents Hon. Karen Goodwin, Presiding		
11/15/2022	Endorsement on Motion to Continue, (#7.0): ALLOWED Judge: Goodwin, Hon. Karen		Image
01/05/2023	Commonwealth 's Memorandum of Law in Opposition to Defendant's Motion to Suppress	8	Image
01/06/2023	Event Result:: Non-Evidentiary Hearing on Suppression scheduled on: 01/06/2023 02:00 PM Has been: Held as Scheduled Comments: The Court recessed for the day and asked the parties to discuss dates with the Clerk¿s office by Monday 01/09/2023. Hon. Mark D Mason, Presiding		
01/27/2023	Event Result:: Trial Assignment Conference scheduled on: 01/27/2023 02:00 PM Has been: Held as Scheduled Comments: MH 2/7 at 2pm Hon. Mark D Mason, Presiding		
02/06/2023	Commonwealth 's Submission of Attachment to Our Proffered Video Evidence	9	Image
02/07/2023	Matter taken under advisement: Evidentiary Hearing on Supression scheduled on: 02/07/2023 02:00 PM		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Has been: Held - Under advisement Hon. Mark D Mason, Presiding		
02/10/2023	Endorsement on Motion to Suppress Evidence, (#6.0): DENIED See Memorandum of Decision and Order of today's date. Judge: Mason, Hon. Mark D		
02/10/2023	ORDER: Decision and Order on Defendant's Motion to Suppress Mr. Page's Motion to Suppress is DENIED. Judge: Mason, Hon. Mark D	10	Image
02/13/2023	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Isaac Mass, Esq. Law Office of Isaac J Mass 355 Main St PO Box 832, Greenfield, MA 01302 Prosecutor, Attorney: Matthew David Thomas, Esq. District Attorney's Office Northwestern District One Gleason Plaza, Northampton, MA 01060		
04/05/2023	Event Result:: Conference to Review Status scheduled on: 04/05/2023 02:00 PM Has been: Held as Scheduled Comments: The parties requested the matter be continued to 05/26/23 at 2:00 pm for a change of plea. The Court Allowed the request. (Simanski, FTR, FCCtRm4). Hon. John A Agostini, Presiding		
05/05/2023	Defendant 's Motion to Continue	11	Image
05/09/2023	Event Result:: Hearing for Change of Plea scheduled on: 05/26/2023 02:00 PM Has been: Rescheduled For the following reason: Request of Defendant Comments: CW assents Hon. David Hodge, Presiding		
05/10/2023	Endorsement on Motion to Continue, (#11.0): ALLOWED without objection Judge: Hodge, Hon. David		Image
08/24/2023	Event Result:: Hearing for Change of Plea scheduled on: 09/07/2023 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Edward J McDonough, Jr., Presiding		
10/04/2023	Other 's Request to take photographs filed by Greenfield Recorder.	12	
10/04/2023	Event Result:: Hearing for Change of Plea scheduled on: 10/04/2023 02:00 PM Has been: Held as scheduled Comments: The defendant admitted the facts as presented are true and accurate with the caveat that he does not admit stealing a firearm. The defendant entered a guilty plea to Count 1 and Count 5. The Court accepted the defendant's guilty plea and sentenced the defendant as follows: Count 1: NLT 3 years and NMT 3 years and 1 day to MCI at SB; and Count 5: 2 years' probation from and after the sentence imposed on Count 1. The Court imposed the following condition of probation: The defendant shall 1. consume no drugs; and 2. be subject to random screens. The Court waived all fines and fees. The defendant shall receive credit for 193 days of previous confinement. The Commonwealth shall file a NP on all other counts. (Goodwin, J., Simanski, FTR, FCCtRm 4). The Commonwealth entered a NP as to Counts 2, 3, 4. Hon. Karen Goodwin, Presiding		
10/04/2023	Finding on plea of guilty. Judge: Goodwin, Hon. Karen (Verbal) Conditional Plea		
10/04/2023	Plea colloquy given. Judge: Goodwin, Hon. Karen		
10/04/2023	Defendant warned pursuant to alien status, G.L. c. 278, § 29D. Judge: Goodwin, Hon. Karen		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
10/04/2023	Issued on this date: Mittimus for Sentence (All Charges) Sent On: 10/04/2023 16:02:17	13	
10/04/2023	Commonwealth files Nolle Prosequi as to count(s): 2 FIREARM, CARRY WITHOUT LICENSE LOADED c269 s.10(n), 3 FIREARM IN FELONY, POSSESS c265 §18B, 4 FIREARM, LARCENY OF c266 §30(1)	14	Image
10/04/2023	Defendant waives rights. Judge: Goodwin, Hon. Karen	15	Image
10/04/2023	Commonwealth files sentence recommendation	16	Image
10/04/2023	Offense Disposition:: Charge #1 FIREARM VIOL WITH 1 PRIOR VIOLENT/DRUG CRIME c269 §10G(a) On: 10/04/2023 Judge: Hon. Karen Goodwin By: Hearing on Plea Offer/Change Guilty Plea Charge #2 FIREARM, CARRY WITHOUT LICENSE LOADED c269 s.10(n) On: 10/04/2023 Judge: Hon. Karen Goodwin By: Hearing on Plea Offer/Change Nolle Prosequi Charge #3 FIREARM IN FELONY, POSSESS c265 §18B On: 10/04/2023 Judge: Hon. Karen Goodwin By: Hearing on Plea Offer/Change Nolle Prosequi Charge #4 FIREARM, LARCENY OF c266 §30(1) On: 10/04/2023 Judge: Hon. Karen Goodwin By: Hearing on Plea Offer/Change Nolle Prosequi Charge #5 DRUG, POSSESS TO DISTRIB CLASS A c94C §32(a) On: 10/04/2023 By: Hearing on Plea Offer/Change Guilty Plea		
10/04/2023	Defendant sentenced:: Sentence Date: 10/04/2023 Judge: Hon. Karen Goodwin Charge #: 1 FIREARM VIOL WITH 1 PRIOR VIOLENT/DRUG CRIME c269 §10G(a) State Prison Sentence Not Less Than: 3 Years, 0 Months, 0 Days Not More Than: 3 Years, 0 Months, 1 Days Committed to Souza Baranowski Correctional Center Credits 193 Days		
10/04/2023	Defendant sentenced:: Sentence Date: 10/05/2023 Judge: Hon. Karen Goodwin Charge #: 5 DRUG, POSSESS TO DISTRIB CLASS A c94C §32(a) Probation: Risk/Need Probation Duration: 2 Years, 0 Months, 0 Days		
10/04/2023	Issued on this date: Mittimus for Sentence (All Charges) Sent On: 10/05/2023 10:01:20	16.1	Image
10/04/2023	Commonwealth 's Motion for forfeiture	17	Image
10/05/2023	Probations files Order of Probation Conditions	18	Image
10/05/2023	Notice to surety bail available for return. Allison Millett		Image
10/13/2023	Notice of appeal filed. Applies To: Page, Justin R (Defendant)	19	Image
10/18/2023	Commonwealth, Defendant 's Agreement for Issues reserved on Appeal	20	Image
10/19/2023	Mittimus returned to court: SERVED	21	Image
10/26/2023	Habeas Corpus for defendant issued to Souza Baranowski Correctional Center returnable for 11/01/2023 02:00 PM Hearing on Forfeitures.	22	Image
11/01/2023	Endorsement on Motion for forfeiture, (#17.0): ALLOWED without prejudice as the guilty plea was conditional; defendant's case is now on appeal.		Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
11/01/2023	Event Result:: Hearing on Forfeitures scheduled on: 11/01/2023 02:00 PM Has been: Held as Scheduled Comments: The Court ALLOWED the motion, without prejudice by agreement of the parties. (Simanski, FTR, FCCtRm 4). Hon. Karen Goodwin, Presiding		
11/28/2023	Posted bail returned	23	
02/01/2024	Attorney appearance On this date Isaac Mass, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Justin R Page		
02/15/2024	Attorney appearance On this date Edward Crane, Esq. added as Appointed - Appellate Action for Defendant Justin R Page		Image
02/15/2024	Docket Note: Verbal confirmation from Appeals Attorney, that transcripts were ordered		
03/15/2024	Transcript received		Image
03/19/2024	Notice of assembly of record sent to Counsel	25	Image
03/19/2024	Notice to Clerk of the Appeals Court of Assembly of Record	26	Image
03/19/2024	Appeal: Statement of the Case on Appeal (Cover Sheet).	27	Image
03/21/2024	Appeal entered in Appeals Court on 03/20/2024 docket number 2024-P-0298	28	Image
09/12/2024	Notice of docket entry received from Appeals Court RE#10 Allowed. The trial court clerks's office shall transmit the 02/07/2023 and the 10/04/2023 transcripts to the Appeals Court clerk's office referencing the Appeals Court docket number (24-P-298).	29	Image
09/16/2024	Court Reporter OTS is hereby notified to prepare one copy of the transcript of the evidence of 10/04/2023 02:00 PM Hearing for Change of Plea, 02/07/2023 02:00 PM Evidentiary Hearing on Suppression OTS Emailed copies of transcripts of both days on 9/18/24 to the Court. Emailed both dates of the transcripts to the Appeals Court 9/18/24.	30	Image
11/20/2024	Notice of docket entry received from Appeals Court Notice of Pre-Scheduling and Unavailability to Argue	31	Image
12/13/2024	Notice of docket entry received from Appeals Court Notice of Pre-scheduling and Unavailability to Argue.	32	Image
01/02/2025	Notice of docket entry received from Appeals Court Notice of Oral Argument.	33	Image
01/02/2025	Notice of docket entry received from Appeals Court Notice of argument by video conference	34	Image
01/03/2025	Notice of docket entry received from Appeals Court The notice remote oral argument was inadvertently issued on 1/2/25 and is withdrawn. Please reference the corrected notice of argument issued thereafter.	35	Image
01/09/2025	Notice of docket entry received from Appeals Court Revised Notice of Argument (Change of Panel)	36	Image
10/17/2025	Rescript received from Appeals Court; judgment AFFIRMED Order denying motion to suppress affirmed..	37	Image

Case Disposition

Disposition	Date	Case Judge
Disposed by Plea	04/22/2022	

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

APPEALS COURT NO. 2024-P-0298

COMMONWEALTH

v.

JUSTIN PAGE

DEFENDANT'S BRIEF ON APPEAL FROM THE FRANKLIN COUNTY SUPERIOR COURT

EDWARD CRANE
Attorney for the Defendant
BBO# 679016
218 Adams Street
P.O. Box 220165
Dorchester, MA 02122
Attyedwardcrane@gmail.com
617-851-8404

JUNE 2024

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

Other State Cases

Secondary Sources

STATEMENT OF THE ISSUE

1. The defendant appeared to be overdosing while seated in a parked car. A police officer seized the defendant's backpack and searched it because he feared a weapon might be inside and he wanted to identify the defendant. Was the officer's warrantless search of the defendant's backpack justified by either the community caretaking exception or the emergency aid exception?

STATEMENT OF THE CASE

On April 1, 2022, the Franklin County Superior Court issued indictments charging the defendant, Justin Page, with (1) unlawful possession of a firearm, (2) unlawful possession of a loaded firearm, (3) possession of a firearm while committing a felony, (4) larceny of a firearm, and (5) possession of heroin with the intent to distribute.[1] (R. 10-15). With respect to count one, the indictment charged the defendant with a sentencing enhancement pursuant to G. L. c. 269, s. 10G(a). (R. 11).

The defendant filed a motion to suppress the firearm and the drugs that formed the basis of the prosecution against him. (R. 6, 23-27). The motion judge (Mason, J.) held an evidentiary hearing over the course of two days beginning on January 6, 2023, and

[1] The defendant's record appendix will be cited by page number as (R. _).

ending on February 7, 2023. (R. 6-7). The judge took the matter under advisement at the close of the hearing. (R. 6-7). The judge issued a decision denying the defendant's motion to suppress on February 10, 2023. (R. 7, 17-22).

The defendant tendered a conditional plea pursuant to Mass. R. Crim. Pro. 12(b)(6) on October 4, 2023. (R. 7). The terms of the plea were agreed to by both sides. (R. 7-8, 28). The defendant agreed to plead guilty to the charge of (1) unlawful possession of a firearm and (5) possession of heroin with intent to distribute. (R. 7-8). He also agreed to plead guilty to the sentencing enhancement on count one. (R. 7-8). In exchange for the defendant's plea, the Commonwealth agreed to dismiss the other charges and to allow the defendant to preserve his right to appeal the denial of his motion to suppress. (R. 7-8, 28). The parties agreed on a sentence of three years in state prison on count one and two years of probation on count five. (R. 7-8). The court accepted the defendant's plea and sentenced the defendant in accordance with the agreement. (R. 7-8). The defendant filed a timely notice of appeal on October 13, 2023. (R. 8, 16).

STATEMENT OF FACTS

The following facts are taken from the testimony at the suppression hearing.

A. The Incident in the Big Y Parking Lot.

William Gordon and his wife Laura Gordon were driving to the Big Y grocery store in Greenfield at around 5:30PM on September 24, 2021.[2] (Mot. I/9-10). They both worked for the Greenfield police department. (Mot. I/10). William Gordon was the deputy chief of the department. (Mot. I/8). Laura Gordon was a police officer for the department.[3] (Mot. I/10). Both of them were off-duty and dressed in plain clothes. (Mot. I/10). They were driving a car that the Greenfield police department provided to Deputy Chief Gordon due to his position in the department. (Mot. I/10-11). The car was equipped with a police radio. (Mot. I/11). Deputy Chief Gordon was driving the car. (Mot. I/11).

As Deputy Chief Gordon pulled into the Big Y parking lot, a report of a semiconscious person in the parking lot came in over the

[2] The transcript of the motion hearing will be cited by volume and page number as (Mot. _/_).
[3] To eliminate confusion, William Gordon will be referred to as Deputy Chief Gordon and Laura Gordon will be referred to as Officer Gordon.

radio. (Mot. I/11). Deputy Chief Gordon subsequently noticed a group of people crowded around a vehicle in the parking lot. (Mot. I/11-12). Deputy Chief Gordon drove up to the vehicle and observed the defendant slumped behind the steering wheel. (Mot. I/12-14). Deputy Chief Gordon used his radio to report his observations and his location while Officer Gordon exited the vehicle to check on the defendant. (Mot. I/14).

The defendant's skin was ashen white and he was nodding his head up and down. (Mot. I/15-16). Officer Gordon told Deputy Chief Gordon that she believed the defendant was overdosing. (Mot. I/15). Deputy Chief Gordon was still seated in his car and radioed this information to dispatch. (Mot. I/15). While on the radio, Deputy Chief Gordon noticed Officer Gordon struggling with the defendant. (Mot. I/17). Deputy Chief Gordon exited his car to try and assist Officer Gordon. (Mot. I/17-18). However, there was not enough room at the driver's side door of the defendant's vehicle for Deputy Chief Gordon to be of assistance. (Mot. I/18). Officer Brent Griffin arrived on the scene shortly thereafter. (Mot. I/18). Officer Griffin was on duty and thus Deputy Chief Gordon stepped aside to allow him to assist Officer Gordon. (Mot. I/18).

Both Officer Gordon and Officer Griffin were now struggling with the defendant as he remained seated in the driver's seat of his vehicle.[4] (Mot. I/18-19). The officers were attempting to calm the defendant down. (Mot. I/20). They explained who they were and told the defendant that they were there to help him. (Mot. I/20). The defendant was reaching for the steering wheel as well as a backpack that was on the passenger's seat. (Mot. I/18-19). Officer Griffin repeatedly told the defendant to stop reaching for the backpack. (Mot. I/19). The defendant ignored this order, pulled away from the officers, and continued to reach for the backpack and the steering wheel. (Mot. I/19, 35). As the struggle ensued, Deputy Chief Gordon tried to open the passenger's side door of the vehicle but it was locked. (Mot. I/19). Officer Gordon used the power lock on the driver's side door to unlock the doors to the vehicle. (Mot. I/20-21). Deputy Chief Gordon subsequently opened the passenger's side door and grabbed the backpack from the passenger's seat. (Mot. I/21).

[4] Officer Griffin testified that the defendant was trying to stand up and walk away from the vehicle. (Mot. II/7). The motion judge did not explicitly credit or discredit this assertion. (R. 19-22).

Deputy Chief Gordon was afraid that there might be a weapon in the backpack. (Mot. I/21). He also believed that the defendant's identification might be in the backpack. (Mot. I/21). Deputy Chief Gordon therefore opened the backpack and searched inside. (Mot. I/21-22). He discovered a knife, a pistol, a large amount of cash, and several small bags containing packets of heroin. (Mot. I/22). After discovering these items, Deputy Chief Gordon instructed Officer Griffin to handcuff the defendant. (Mot. I/23). Officer Griffin removed the defendant from the vehicle and handcuffed him. (Mot. I/24, 32-33).

Officer Griffin was a drug recognition expert. (Mot. I/25). After speaking with and interacting with the defendant, Officer Griffin determined that there was no medical emergency. (Mot. I/41, 48; Mot. II/14). Officer Griffin placed the defendant in the back seat of his police cruiser and drove to the Greenfield police station. (Mot. II/11). At the police station, Officer Griffin handed custody of the defendant over to Officer Brandon Lagoy. (Mot. II/11, 21-22). Officer Lagoy asked the defendant if he was aware of anything in his backpack. (Mot. II/29). The defendant stated that there were drugs and a gun. (Mot. II/29). Officer Lagoy asked the defendant where he

got the gun from. (Mot. II/29). The defendant stated that he took it from his mother's house. (Mot. II/29).

B. The Motion to Suppress.

The defendant filed a motion to suppress the evidence that Deputy Chief Gordon seized from the defendant's backpack.[5] (R. 6, 23-26). The defendant argued that Deputy Chief Gordon's search of the backpack was unconstitutional because it was not justified by any exception to the warrant requirement. (R. 23-27). A suppression hearing was held over the course of two days. (R. 6-7). Deputy Chief Gordon, Officer Griffin, and Officer Lagoy testified at the hearing. (Mot. I/2; Mot. II/2). At the close of the hearing, the defendant argued that the emergency aid exception to the warrant requirement was inapplicable because there was no longer an ongoing emergency at the time of the search. (Mot. II/35-38). He also argued that the exception was inapplicable because the purpose of Deputy Chief Gordon's search was not to alleviate the emergency. (Mot. II/38). In response, the Commonwealth argued

[5] The defendant also moved to suppress the inculpatory statements that he made at the police station. (R. 23-26). The motion judge never ruled on this part of the motion and thus it is not addressed in this appeal.

that the emergency aid exception was applicable. (Mot. II/39-42). Neither side raised the applicability of the community caretaking exception to the warrant requirement. (Mot. II/35-45). After listening to both sides, the motion judge took the matter under advisement. (Mot. II/45).

The motion judge issued a written decision denying the defendant's motion to suppress. (R. 17-22). The judge concluded that Deputy Chief Gordon's warrantless search of the defendant's backpack was constitutional pursuant to the community caretaking exception. (R. 20-22). The judge wrote as follows:

> Deputy Chief Gordon believed that [the] defendant was suffering from an overdose while [the] defendant repeatedly attempted to grab the backpack and the steering wheel. Deputy Chief Gordon reasonably based his seizure of the backpack upon both the need to ascertain [the] defendant's identity as well as for the safety of the public, the officers, and [the] defendant. Under those circumstances, the seizure and opening of the backpack was lawful. "An officer may take steps that are reasonable and consistent with purpose of his [community caretaking] inquiry, . . . even if those steps include actions that might otherwise be constitutionally intrusive." *Commonwealth v. Knowles*, 451 Mass. 91, 95 (2008). "If an officer uncovers evidence of criminal activity while operating within the scope of this inquiry, it is admissible." *Id.*, citing *Commonwealth v. Leonard*, 422 Mass. 504, 509, cert. denied, 519 U.S. 877 (1996).
>
> A noncoercive inquiry initiated for a community caretaking purpose may ripen into a seizure requiring constitutional justification. See *Commonwealth v. Mateo-German*, 453 Mass.

> 838, 842 (2009). There was an objective basis to believe that [the] defendant's well-being or the safety of the public was in immediate jeopardy. An objective view of the facts reveals that the police were engaged in caretaking rather than a criminal investigation which was motivated by the search for evidence. The Commonwealth has met its burden of demonstrating, by objective evidence, that the officers' actions were "divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973).

(R. 21-22).

In conclusion, the motion judge ruled that Deputy Chief Gordon's search of the defendant's backpack was constitutional because it "fell within the scope of the community caretaking function." (R. 22).

C. The Defendant's Conditional Plea.

The defendant and the Commonwealth negotiated a conditional plea agreement pursuant to Mass. R. Crim. Pro. 12(b)(6). (R. 6-7, 28). The defendant agreed to plead guilty to the charges of (1) unlawful possession of a firearm and (5) possession of heroin with intent to distribute. (R. 6-7). He also agreed to plead guilty to the sentencing enhancement on count one. (R. 6-7). In exchange for the defendant's plea, the Commonwealth agreed to

dismiss the other charges and to allow the defendant to preserve his right to appeal the denial of his motion to suppress. (R. 6-7, 28).

SUMMARY OF THE ARGUMENT

The defendant's motion to suppress should have been allowed because the warrantless search of the defendant's backpack was justified by neither the community caretaking exception nor the emergency aid exception. The community caretaking exception is inapplicable because the Supreme Court's decision in *Caniglia v. Strom*, 593 U.S. 194 (2021), indicates that this exception does not exist under the Fourth Amendment.[6] (D. Br. 21-34). And even if it does exist, the scope of the exception does not extend to cover a warrantless search of a person's backpack. (D. Br. 35-37). The emergency aid exception is also inapplicable because the Commonwealth failed to establish that Deputy Chief Gordon searched the defendant's backpack for purposes of alleviating the ongoing emergency. (D. Br. 37-45).

[6] The defendant's brief will be cited by page number as (D. Br. _).

ARGUMENT

I. THE DEFENDANT'S MOTION TO SUPPRESS SHOULD HAVE BEEN ALLOWED BECAUSE DEPUTY CHIEF GORDON'S WARRANTLESS SEARCH OF THE DEFENDANT'S BACKPACK WAS NOT JUSTIFIED BY EITHER THE COMMUNITY CARETAKING EXCEPTION OR THE EMERGENCY AID EXCEPTION TO THE WARRANT REQUIREMENT.

The motion judge incorrectly applied the community caretaking exception to justify Deputy Chief Gordon's warrantless search of the defendant's backpack. The continued vitality of this exception is in serious doubt in the wake of the Supreme Court's decision in *Caniglia v. Strom*, 593 U.S. 194 (2021). The Supreme Court has never formally recognized the existence of a community caretaking exception to the warrant requirement under the Fourth Amendment. In *Caniglia*, the Court expressed skepticism about the existence of such an exception and emphasized instead the applicability of the emergency aid exception. 593 U.S. at 198-208. The Appeals Court should follow the bread crumbs laid out by the Supreme Court and rule that, under the Fourth Amendment, there is no community caretaking exception that operates distinctly from the emergency aid exception.

The question of whether the community caretaking exception remains viable under the Fourth Amendment is just the first step in the analysis here. If the Appeals Court concludes that the exception still exists despite the skepticism expressed in *Caniglia*, then it must consider whether the scope of the doctrine extends to a warrantless search of a person's belongings. Given what the Supreme Court has said regarding the doctrine, the Appeals Court should conclude that it does not extend this far. Finally, if the Appeals Court follows the Supreme Court's guidance and rules that the community caretaking exception either does not exist or does not extend to cover a warrantless search of a person's belongings, then it must determine whether the warrantless search of the defendant's backpack was justified under the emergency aid exception. The Court should conclude that the emergency aid exception is not applicable because the Commonwealth failed to establish that the purpose of Deputy Chief Gordon's search was to help alleviate the ongoing emergency.

A. The Appeals Court Should Heed The Supreme Court's Skepticism In *Caniglia* And Rule That The Community Caretaking Exception Does Not Exist Under The Fourth Amendment.

The Appeals Court should rule that the community caretaking exception is no longer viable under the Fourth Amendment in the aftermath of the Supreme Court's decision in *Caniglia v. Strom*, 593 U.S. 194 (2021). Before addressing *Caniglia*, it is first important to understand the historical development of the community caretaking exception. The exception has its roots in the Supreme Court's decision in *Cady v. Dombrowski*, 413 U.S. 433 (1973). The defendant in *Cady* was an off-duty police officer who crashed his car into a bridge in Wisconsin. 413 U.S. at 435-436. The police arrived on the scene of the accident and had the defendant's car towed to a privately owned garage. *Id.* at 436. Fearing that the defendant's service weapon was still in his car, an officer drove to the garage where the car was towed and searched the vehicle. *Id.* Instead of finding a firearm, the officer discovered evidence that implicated the defendant in a murder. *Id.* at 437. On certiorari, the Supreme Court considered whether the officer's warrantless search of the vehicle violated the Fourth Amendment. *Id.* at 439-448. The

Court concluded that it did not. *Id.* at 448. In reaching this conclusion, the Court emphasized two points. *Id.* at 442-443. First, the car was disabled as a result of the accident and thus the police acted reasonably by having it towed from the scene. *Id.* Second, the officer followed the "standard procedure" of his department in searching the impounded car. *Id.* at 443.

After a close read of *Cady*, one could hardly be faulted for concluding that its proper place is in the line of cases establishing the inventory search exception to the warrant requirement.[7] However, one sentence in the opinion gave birth to the community caretaking exception. That sentence reads as follows:

> Local police officers, unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.

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[7] See Christopher Slobogin, *Police as Community Caretakers: Caniglia v. Strom*, 2021 Cato Sup. Ct. Rev. 191 (2021) ("[R]ead more closely and with the aid of hindsight, *Cady* is not about a freestanding caretaker exception at all. Rather, it was based on a nascent version of what would come to be called the inventory exception to the warrant requirement, which is meant to allow police departments to conduct warrantless searches of impounded cars for dangerous items and valuables that might otherwise be stolen, and to protect the police against false claims of theft.").

Cady, 413 U.S. at 441.

This sentence was dicta and nothing about it suggested that the Supreme Court intended to create a new community caretaking exception to the warrant requirement.[8] Yet courts from across the country latched onto this language and used it to justify the creation of such an exception.[9] As the community caretaking exception spread throughout the state and federal courts, the scope of the exception began to expand as well.[10] No longer was the exception solely being applied to warrantless searches of

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[8] See *United States v. Soto-Lopez*, 2022 WL 17480563 at *10 (D. Alaska 2022) ("A careful reading of *Cady* confirms that the Supreme Court did not intend to create a wholly new exception to the warrant requirement when it used the community caretaking phrase.").

[9] See, e.g., *United States v. Coccia*, 446 F.3d 233, 238 (1st Cir. 2006); *Ray v. Township of Warren*, 626 F.3d 170, 174-175 (3rd Cir. 2010); *United States v. Johnson*, 410 F.3d 137, 143-144 (4th Cir. 2005); *Sutterfield v. City of Milwaukee*, 751 F.3d 542, 553-554 (7th Cir. 2014); *State v. Tully*, 348 A.2d 603, 609 (Conn. 1974); *State v. Smith*, 540 N.W.2d 374, 379-380 (Neb. Ct. App. 1995); *State v. Psomiades*, 658 A.2d 1190, 1191 (N.H. 1995); *State v. Marcello*, 599 A.2d 357, 358 (Vt. 1991); *Commonwealth v. Waters*, 456 S.E.2d 527, 529-530 (Va. Ct. App. 1995); *People v. Davis*, 497 N.W.2d 910, 918-919 (Mich. 1993).

[10] See Gregory Helding, *Stop Hammering Fourth Amendment Rights: Reshaping The Community Caretaking Exception With The Physical Intrusion Standard*, 97 Marq. L. Rev. 123, 149 (2013) ("[C]ourts have fallen like dominoes as the expansion of community caretaking has spread through American jurisprudence.").

impounded automobiles. It was now being applied to justify detaining individuals[11] and stopping motor vehicles.[12] At its utmost extreme, the exception was being employed to validate warrantless searches of homes.[13]

The appellate courts in Massachusetts followed suit in adopting and expanding the community caretaking exception. The SJC first recognized the exception in *Commonwealth v. Murdough*, 428 Mass. 760 (1999). In this case, the Court concluded that an exit order to a seemingly intoxicated motorist was constitutional under the community caretaking exception. *Id.* at 764. From this starting point, the exception gradually expanded to cover other types of searches and seizures. The SJC applied the exception to

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[11] See, e.g., *United States v. Garner*, 416 F.3d 1208, 1214 (10th Cir. 2005); *Winters v. Adams*, 254 F.3d 758, 763 (8th Cir. 2001); *McGlenn v. United States*, 211 A.3d 1133, 1137-1139 (D.C. Ct. App. 2019); *State v. Shiffermiller*, 922 N.W.2d 763, 778 (Neb. 2019).

[12] See, e.g., *United States v. King*, 990 F.2d 1552, 1560-1561 (10th Cir. 1993); *State v. Mireles*, 991 P.2d 878, 881-882 (Idaho Ct. App. 1999); *State v. Bakewell*, 730 N.W.2d 335, 338-339 (Neb. 2007); *State v. Smathers*, 753 S.E.2d 380, 387-388 (N.C. Ct. App. 2014).

[13] See, e.g., *United States v. Quezada*, 448 F.3d 1005, 1007-1008 (8th Cir. 2006); *United States v. Rohrig*, 98 F.3d 1506, 1523 (6th Cir. 1996); *People v. Ray*, 981 P.2d 928, 931 (Cal. 1999); *State v. Alexander*, 721 A.2d 275, 280-283 (Md. Ct. Spec. App. 1998); *State v. Pinkard*, 785 N.W.2d 592, 597-601 (Wisc. 2010).

justify police requests for license and registration.[14] Most recently, the SJC applied the exception to justify the brief detention of an individual acting erratically.[15] The Appeals Court applied the exception in similar circumstances,[16] but also expanded the exception to cover warrantless entries into residences.[17]

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[14] See *Commonwealth v. Mateo-German*, 453 Mass. 838, 843 (2009) (request for license and registration valid under community caretaking exception where defendant's car disabled on side of highway); *Commonwealth v. Evans*, 436 Mass. 369, 372-373 (2002) (request for license and registration valid under community caretaking exception where defendant sleeping in parked car on side of deserted highway).

[15] *Commonwealth v. Armstrong*, 491 Mass. 341, 349-350 (2023). See also *Commonwealth v. Knowles*, 451 Mass. 91, 94-95 (2008) ("In carrying out [the community caretaking] function, an officer may, when the need arises, stop individuals and inquire about their well-being, even if there are no grounds to suspect that criminal activity is afoot.").

[16] See *Commonwealth v. Sargsyan*, 99 Mass. App. Ct. 114, 118-119 (2021) (community caretaking exception applied where police instructed driver of parked vehicle to lower window and provide license and registration); *Commonwealth v. Fisher*, 86 Mass. App. Ct. 48, 51-53 (2014) (exit order to apparently intoxicated defendant valid under community caretaking exception); *Commonwealth v. McDevitt*, 57 Mass. App. Ct. 733, 736 (2003) (applying community caretaking exception where police officer pulled behind parked vehicle, turned on flashing lights, and went to speak with driver).

[17] See *Commonwealth v. Cantelli*, 83 Mass. App. Ct. 156, 164-165 (2013) (community caretaking exception justified warrantless entry into home because dangerous levels of gas were emanating from the residence). See also *Commonwealth v. Carniero*, 83 Mass. App. Ct. 1132 at *1 (May 17, 2013) (unpublished decision) (warrantless entry into defendant's backyard validated by community caretaking

While the community caretaking exception expanded amongst the lower courts, the Supreme Court said little about this exception that it seemingly gave unintentional birth to in *Cady*. The Supreme Court used the term "community caretaking" in only one case in the four decades following its 1973 decision in *Cady*. This case, *South Dakota v. Opperman*, 428 U.S. 364 (1976), established the standard for applying the inventory search exception to the warrant requirement. *Id.* at 375-376. In sum, the Supreme Court never explicitly recognized the existence of a community caretaking exception and only used the phrase "community caretaking" when assessing the propriety of an inventory search of an impounded vehicle.

The Supreme Court ended its silence with respect to the community caretaking exception in *Caniglia v. Strom*, 593 U.S. 194 (2021). In *Caniglia*, the Court considered whether the exception can justify a warrantless search of a person's home. 593 U.S. at 196.

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exception); *Commonwealth v. Paul*, 82 Mass. App. Ct. 1109 at *3 (Aug. 6, 2012) (unpublished decision) (warrantless entry into defendant's residence justified by community caretaking exception). But see *Commonwealth v. Suters*, 90 Mass. App. Ct. 449, 453 n.5 (2016) (noting uncertainty as to whether community caretaking exception would permit warrantless entry into residences).

The Court concluded that the exception cannot validate such an intrusion. *Id.* In reaching this conclusion, the Court stated that "[t]he First Circuit's 'community caretaking' rule . . . goes beyond anything this Court has recognized." *Id.* at 198. The Court ultimately framed its holding narrowly: The community caretaking exception does not apply to warrantless entries into homes. *Id.* at 199. However, in doing so, the Court raised serious doubts about the actual existence of a community caretaking exception under the Fourth Amendment.

The majority opinion written by Justice Thomas is laden with skepticism for the exception. Consider the following passage discussing the First Circuit's decision:

> Citing this Court's statement in *Cady* that police officers often have noncriminal reasons to interact with motorists on public highways, the First Circuit extrapolated a freestanding community-caretaking exception that applies to both cars and homes.

Caniglia, 593 U.S. at 197.

If *Cady* in fact created a community caretaking exception, then the Court would have acknowledged as much. Instead, the Court stated that the First Circuit was responsible for creating this exception. This is not a semantical difference. By casting the community

caretaking exception as a creation of the First Circuit as opposed to a creation of the Supreme Court, the majority opinion highlighted the fact that the latter has never formally endorsed the existence of such an exception. Without changing the result of the case, the Court could have explicitly adopted the exception yet limited its application to warrantless searches of vehicles. The Court instead declined to acknowledge the exception's existence whatsoever.

The concurring opinions raise further doubt about the existence of a community caretaking exception. Justice Alito did not mince words; he explicitly stated that the exception does not exist:

> [T]here is no special Fourth Amendment rule for a broad category of cases involving "community caretaking." As I understand the term, it describes 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 (1973), did not recognize any such "freestanding" Fourth Amendment category. The opinion merely used the phrase "community caretaking" in passing.

Caniglia, 593 U.S. at 200 (Alito, J., concurring).

Unlike Justice Alito's concurrence, the other two concurring opinions did not explicitly reject the community caretaking exception. They nevertheless raised doubt about its existence. Chief Justice Roberts issued a brief concurring opinion (joined by Justice Breyer) in which he emphasized the emergency aid exception to the warrant requirement. *Caniglia*, 593 U.S. at 199-200 (Roberts, C.J., concurring). Without saying as much, the Chief Justice's point was clear: This case should have been argued and analyzed under the emergency aid exception, which the Court formulated in *Brigham City v. Stuart*, 547 U.S. 398 (2006), and not under the community caretaking exception, which the Court has never recognized. Justice Kavanaugh's concurrence stressed the same point. *Caniglia*, 593 U.S. at 204-208 (Kavanaugh, J., concurring). He highlighted numerous examples in which the emergency aid exception would allow a warrantless entry into the home. *Id.* at 207-208. With respect to the community caretaking exception, Justice Kavanaugh reemphasized that this exception is a creation of the lower courts. *Id.* at 205. Though each opinion in *Caniglia* is worded differently, they all preach the same message: There is no separate community

caretaking exception that is distinct from the emergency aid exception.

The Supreme Court certainly hinted at its distaste for the community caretaking exception in *Caniglia*. However, it did not expressly reject the exception and thus it remains an open question as to whether the exception is actually viable under the Fourth Amendment. Some courts have reaffirmed the existence of a community caretaking exception in the wake of *Caniglia*.[18] Yet other courts and commentators have raised the prospect that *Caniglia* eliminated the exception altogether.[19] In answering this question,

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[18] See *State v. Porter*, 497 P.3d 209, 213 (Idaho Ct. App. 2021) (rejecting defendant's argument that *Caniglia* abolished community caretaking exception); *State v. Promer*, 970 N.W.2d 588, 589 (Wisc. Ct. App. 2022) (same).

[19] See *Clemons v. Couch*, 3 F.4th 897, 904 (6th Cir. 2021) ("We now know, based on *Caniglia*, that the community-caretaker exception, to the extent it exists at all, does not apply to the home."); *Dahl v. Kilgore*, 2021 WL 3929226 at *5 (6th Cir. Sep. 2, 2021) ("[T]he Supreme Court's recent decision in [*Caniglia*] casts doubt as to whether the community caretaker exception exists outside the vehicular context, if at all."); *United States v. Hewitt*, 543 F. Supp. 3d 317, 320-321 (W.D. Va. 2021) (questioning whether exception exists after *Caniglia*); *United States v. Wertenberger*, 2021 WL 3877686 (W.D. Mo. Aug. 10, 2021) ("Although the *Caniglia* holding was expressly limited to warrantless searches of a home, a fair reading of the opinion calls into question whether community caretaking is a standalone exception to the Fourth Amendment warrant requirement in those circumstances beyond the search of a home."); Ric Simmons,

the Appeals Court should follow the Supreme Court's guidance from *Caniglia*. The Appeals Court should conclude that the community caretaking exception does not exist under the Fourth Amendment and rule that the emergency aid exception is instead the proper analytical tool in these types of cases.

Such a ruling would provide much needed clarity to judges, lawyers, and law enforcement. It is not difficult to see why the Supreme Court is reluctant to endorse the community caretaking exception. The exception is a legal quagmire. The courts that have adopted the community caretaking exception employ a patchwork of

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Lange, Caniglia, and the Myth of Home Exceptionalism, 54 Ariz. St. L. J. 145, 172 (2022) ("The second interpretation of *Caniglia* has little to do with home exceptionalism. Under this view, the Court abolished the community caretaking altogether—or, more accurately, claimed that such an exception never existed."); Slobogin, *supra* note 7 at 210 ("It does not necessarily follow . . . that *Caniglia's* concern about a 'freestanding' caretaker exception disappears when the caretaker search is of a car rather than a home.").

different standards to determine its applicability.[20] The standard for applying the exception in Massachusetts is similarly inconsistent. The cases applying the exception repeatedly emphasize that the exception is applicable when police action is "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Armstrong*, 492 Mass. at 349, quoting *Cady*, 413 U.S. at 441. Yet there is no consensus as to how to apply this standard. Sometimes the focus is on the motivation

[20] See *Hawkins v. United States*, 113 A.3d 216, 221 (D.C. 2015) (discussing different tests that courts have adopted for applying community caretaking exception); Michael R. Dimino, Sr., *Police Paternalism: Community Caretaking, Assistance Searches, and Fourth Amendment Reasonableness*, 66 Wash. & Lee L. Rev. 1485, 1494 (2009) ("The vagueness surrounding the definition of the community-caretaking category and the different standards governing the constitutionality of different types of community-caretaking searches indicate that more precision is needed. There is not a single community-caretaking doctrine. Rather, there are several different community-caretaking doctrines, but courts have not clarified the constitutional interests affected by those different kinds of searches."); Transcript of Oral Argument at 59, *Caniglia v. Strom*, 593 U.S. 194 (2021) (Sotomayor, J.) ("[I]'ve read the decisions of other circuits. They seem all to have different factors that make up community caretaking and I'm actually not sure what it means.").

underlying the police action.[21] Other times the motivation of the police is irrelevant and the focus is on whether there was an objective basis for believing that the defendant's safety was in jeopardy.[22] Considering the convoluted state of the community caretaking exception, it is understandable why the Supreme Court has decided not to wade into this morass.

In comparison to the community caretaking exception, the emergency aid exception is a beacon of clarity. It is applicable if there is "a need to assist persons who are seriously injured or threatened with such injury." *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). This standard is straightforward and easy to apply. Given the clarity of the emergency aid exception, it is unsurprising

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[21] See *Commonwealth v. Knowles*, 451 Mass. 91, 95-96 (2008) (stating that Commonwealth has burden to prove non-investigatory purpose and concluding that exception does not apply because officer's actions showed he was engaged in criminal investigation); *Commonwealth v. Lubiejewski*, 49 Mass. App. Ct. 212, 216 (2000) (exception did not apply to stop of motor vehicle because officer was motivated by investigatory purpose). See also *Commonwealth v. Entwhistle*, 463 Mass. 205, 219 n.8 (2012) (recognizing that "subjective noninvestigative intent is relevant to the community caretaking exception" under federal law).

[22] See *Commonwealth v. Fisher*, 86 Mass. App. Ct. 48, 51-52 (2014) (subjective intent of officer deemed irrelevant to analysis); *Commonwealth v. McDevitt*, 57 Mass. App. Ct. 733, 736 (2003) (same).

that the Supreme Court sees little need to adopt the community caretaking exception. The two exceptions largely cover the same realm of cases.[23] This overlap does nothing but create confusion for judges, lawyers, and law enforcement. The instant case is a prime example, as the parties argued the case under the emergency aid exception but the judge decided the case based on the community caretaking exception. The best way to avoid this confusion is to endorse one exception and reject the other. The Supreme Court's decision in *Caniglia* makes it clear that the emergency aid exception should win this battle at the expense of the community caretaking exception. The Appeals Court should heed the Supreme Court's advice and do away with the community caretaking exception so as to allow the emergency aid exception to take its proper place in Fourth Amendment jurisprudence.

[23] See *Commonwealth v. Duncan*, 467 Mass. 746, 750 n.3 (2014) (noting close relationship between two exceptions); *Entwhistle*, 463 Mass. at 219 n.8 (discussing overlap as well as differences between the exceptions).

B. Even If The Community Caretaking Exception Is Viable Under The Fourth Amendment, Its Scope Does Not Extend To Justify A Warrantless Search Of A Person's Backpack.

If the Appeals Court were to conclude that the community caretaking exception continues to exist under the Fourth Amendment, then it must next consider whether the scope of the exception would permit it to justify Deputy Chief Gordon's warrantless search of the defendant's backpack. The continuing existence of the community caretaking exception is not the only uncertainty raised by *Caniglia*. If the exception exists, its scope is also uncertain. *Caniglia* establishes that the exception cannot justify a warrantless entry into a home. 593 U.S. at 196. *Cady* suggests that the exception (to the extent it exists) can justify an inventory search of an impounded vehicle. 413 U.S. at 447-448. There is obviously a huge grey area between these two extremes. Deputy Chief Gordon's warrantless search of the defendant's backpack falls into this uncertain space. Given the Supreme Court's expressed skepticism for the community caretaking exception, the Appeals Court should be wary of expanding the exception beyond the circumstances at issue in *Cady*. There is a significant difference between conducting a warrantless inventory

search of an impounded vehicle and conducting a warrantless search of a person's backpack. The Appeals Court should rule that the community caretaking exception, if it still exists, can justify the former but not the latter.

In determining the scope of the community caretaking exception, the first place to look is the Supreme Court's decision in *Cady*. This is the only case in which it can plausibly be argued that the Supreme Court applied the community caretaking exception to justify a warrantless search. *Cady*, 413 U.S. at 441-448. The Supreme Court determined that the warrantless search of the defendant's impounded vehicle was reasonable under the Fourth Amendment because the police had exercised control of the vehicle and conducted their search pursuant to their department's standard procedure. *Id.* at 443-444. *Cady* gives no indication that the police may conduct a warrantless search of anything within a vehicle whenever they believe that the safety of the public is in jeopardy. It certainly does not suggest that a warrantless search of a person's backpack is valid as long as the police have no investigatory motive. Instead, *Cady* suggests that a warrantless search of an impounded vehicle is valid if the police reasonably

exercised control over the vehicle and conducted the search pursuant to standard procedure. 413 U.S. at 443-444.

Any expansion of the community caretaking exception beyond these circumstances is equivalent to walking a constitutional tightrope. The Supreme Court has given no indication that the exception has a broader scope than the facts at issue in *Cady*. In fact, *Caniglia* suggests that the exception, if it exists at all, should be applied to a narrow set of circumstances. There is nothing in either of these decisions that would justify expanding the scope of the exception so as to cover a warrantless search of a person's backpack. The Appeals Court should not go where the Supreme Court has not. Until the Supreme Court says otherwise, the scope of the community caretaking exception should not extend to justify a warrantless search of a person's backpack.

C. The Emergency Aid Exception Is Not Applicable Because Deputy Chief Gordon Did Not Search The Defendant's Backpack In Order To Alleviate The Ongoing Emergency.

If the Appeals Court agrees with either of the above arguments regarding the inapplicability of the community caretaking exception, then it should apply the emergency aid exception to determine if Deputy Chief Gordon's warrantless search of the defendant's

backpack was valid under the Fourth Amendment and Article 14. As noted above, the emergency aid exception involves a far more coherent standard than the community caretaking exception. The emergency aid exception is applicable if there is "a need to assist persons who are seriously injured or threatened with such injury." *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). "For the exception to apply, the burden of proof is on the Commonwealth to show that . . . there were reasonable grounds for the police to believe (an objective standard) that an emergency existed." *Commonwealth v. Snell*, 428 Mass. 766, 774, 775 (1999). The exception is only applicable "when the purpose of the [warrantless conduct] is not to gather evidence of criminal activity but rather, because of an emergency, to respond to an immediate need for assistance." *Commonwealth v. Erickson*, 74 Mass. App. Ct. 172, 175 (2009). In addition to having to prove the existence of an emergency, the Commonwealth must also establish that the purpose of the warrantless conduct was to tend to the emergency. *Commonwealth v. Kaeppeler*, 473 Mass. 396, 404 (2015).

The Commonwealth undoubtedly satisfied its burden of establishing the existence of an emergency. The defendant was

slumped behind the steering wheel. His skin was ashen white and his head was nodding up and down. In light of these observations, it was reasonable for Officer Gordon to believe that the defendant was overdosing and thus that an emergency existed. However, the Commonwealth failed to establish that Deputy Chief Gordon searched the defendant's backpack in order to alleviate this emergency. The motion judge found that Deputy Chief Gordon searched the backpack for two reasons:

> [F]irst, to determine if it contained a weapon to ensure the safety of the public, the police, and the defendant; and second, to determine if it contained [the] defendant's identification.

(R. 19).

Neither reason was related to the ongoing emergency. The ongoing emergency was the real risk that the defendant was overdosing, not the unfounded risk that the defendant was trying to retrieve a weapon from the backpack. Deputy Chief Gordon did not search the backpack for a weapon in order to prevent the defendant from overdosing. The same is true of Deputy Chief Gordon's search for the defendant's identification. Deputy Chief Gordon testified that he was looking for the defendant's identification "because we really didn't know who he was." (Mot. I/21). In other words, Deputy Chief

Gordon was seeking the defendant's identification so as to identify him, not to prevent him from overdosing. The emergency aid exception is therefore inapplicable because, though an emergency existed, Deputy Chief Gordon's warrantless search of the defendant's backpack was not undertaken for purposes of alleviating this emergency.

The cases of *Commonwealth v. Kaeppeler*, 473 Mass. 396 (2015), and *Commonwealth v. McCarthy*, 71 Mass. App. Ct. 591 (2008), provide instructive comparisons on this point. In *Kaeppeler*, two individuals became seriously ill after a night of drinking that ended with the consumption of tequila at the defendant's home. 473 Mass. at 397-398. The conditions of both individuals deteriorated throughout the following day and they eventually went to the hospital. *Id.* at 398-399. The medical staff treating the two individuals suspected that the tequila was to blame and asked the police to conduct a well-being check on the defendant because he too had been drinking the tequila. *Id.* at 399. The police went to the defendant's home and spoke with him. *Id.* at 400. He appeared sleepy and told the police that he was not feeling well. *Id.* At the urging of the police, the defendant went to the hospital in an

ambulance. *Id*. The police remained in the defendant's home after he left and seized two tequila bottles from the residence. *Id*. The defendant was later charged with and ultimately convicted of raping and unlawfully drugging one of the individuals who had consumed the tequila. *Id*. at 396-397. Tests conducted on one of the tequila bottles revealed the presence of a known "date-rape" drug and this evidence was used against the defendant at trial. *Id*. at 397.

On appeal, the defendant challenged the warrantless seizure of the tequila bottles from his home. *Kaeppeler*, 473 Mass. at 397. Applying the emergency aid exception, the SJC concluded that the initial warrantless entry into the defendant's home was justified because of the risk that the defendant had become seriously ill like the two individuals in the hospital. *Id*. at 401-402. However, the Court further concluded that the warrantless seizure of the tequila bottles was not justified by the emergency aid exception. *Id*. at 403-404. The Court reasoned that the exception was inapplicable because the police did not seize the bottles in order to tend to the emergency. *Id*. The Court explained as follows:

> If the police . . . had seized the bottles in order to determine if the tequila contained a chemical or other contaminant that made the three people ill, the seizure might have been

> reasonable under the emergency aid exception. We need not, however, decide whether those circumstances would have rendered the seizure reasonable, because no such intent was shown. Sergeant Tynan testified . . . that the bottles were seized because the officers "didn't know the status of the two people at the hospital" and they had information that the tequila was "the only thing the patients had consumed in that house at that time the night before." While the motion judge did not make any findings regarding the purpose of the seizure, he noted at the evidentiary hearing that Sergeant Tynan's statement about the purpose of the seizure was ambiguous and that the sergeant was never asked whether police took the bottles to aid in treatment or for proof of drugging. It is undisputed that the bottles were not submitted for immediate testing to determine the cause of the illness, and the Commonwealth, bearing the burden to show that the emergency aid exception was satisfied, presented insufficient evidence to support a finding that the bottles were seized in order to determine the cause of the illness.

Id. at 404.

In sum, the Court concluded that the emergency aid exception was inapplicable because the Commonwealth failed to establish that the police seized the bottles for purposes of tending to the emergency. *Id.*

The Appeals Court's decision in *Commonwealth v. McCarthy*, 71 Mass. App. Ct. 591 (2008), shows the flip side of the coin. The defendant in *McCarthy* appeared to be overdosing while at a restaurant. 71 Mass. App. Ct. at 992. A police officer arrived at the scene first. *Id.* He was followed shortly thereafter by emergency

medical personnel. *Id.* In the course of treating the defendant, the medical personnel asked the police officer if he knew what drugs the defendant had taken. *Id.* The officer did not and therefore searched the defendant's handbag. *Id.* at 592-993. The officer located both marijuana and cocaine in the handbag. *Id.* On appeal, the Appeals Court considered whether the officer's warrantless search of the defendant's handbag was valid under the emergency aid exception. *Id.* at 593. The Court concluded that the exception was applicable because there was an ongoing emergency and the police officer searched the defendant's handbag to help deal with that emergency. *Id.* 593-595. Analyzing the purpose of the search, the Court wrote as follows:

> The motion judge specifically found that Officer McGinnis "opened the handbag for the purpose of looking for drugs whose identity, if known, may assist the EMTs in treating the defendant." This finding addresses the first requirement for a warrantless search to be covered by the emergency exception, namely, that the purpose of the search is not to gather evidence of criminal activity. This finding supports the conclusion that Officer McGinnis acted with the purpose of helping the defendant, rather than with the purpose of securing evidence for a possible criminal trial.

Id. at 993 (internal citations omitted) (emphasis added).

Unlike *Kaeppeler*, the emergency aid exception was applicable because the warrantless search of the defendant's handbag was undertaken for purposes of tending to the ongoing emergency. *McCarthy*, 71 Mass. App. Ct. at 993.

Returning to the instant case, it is much more legally akin to *Kaeppeler* despite the factual similarities to *McCarthy*. Like the situation in *Kaeppeler*, the warrantless search at issue here was not performed for purposes of dealing with the ongoing emergency. As noted above, Deputy Chief Gordon stated that he searched the defendant's backpack because (1) he feared that there might be a weapon inside and (2) he wanted to locate the defendant's identification. (R. 19). Simply put, his motive in searching the backpack was not to alleviate the risk that the defendant was overdosing. Thus, in accordance with *Kaeppeler*, the emergency aid exception is not applicable. While the facts of *McCarthy* are similar to those presented here, there is an obvious and legally material distinction. The officer in *McCarthy* searched the defendant's handbag "for the purpose of looking for drugs whose identity, if known, may [have] assist[ed] the EMTs in treating the defendant." 71 Mass. App. Ct. at 593. That is not the purpose that motivated

Deputy Chief Gordon in searching the defendant's backpack. He was motivated by his fear of a weapon and a desire to identify the defendant.

The emergency aid exception is inapplicable because Deputy Chief Gordon did not search the defendant's backpack for purposes of preventing a possible overdose. For the exception to be applicable, the Commonwealth has the burden of establishing that the warrantless conduct was undertaken with the purpose of alleviating an ongoing emergency. The Commonwealth failed to satisfy its burden with respect to this requirement and thus the exception is inapplicable.

CONCLUSION

The warrantless search of the defendant's backpack cannot be justified by either the community caretaking exception or the emergency aid exception to the warrant requirement. The search therefore violated the defendant's rights under both the Fourth Amendment and Article 14. The Court should remand this case and permit the defendant an opportunity to withdraw his plea in accordance with Mass. R. Crim. Pro. 12(b)(6).

Respectfully Submitted,
JUSTIN PAGE,
By his attorney,

/s/ Edward Crane /s/

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COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

FAR NO. _____
APPEALS COURT NO. 2024-P-0298

COMMONWEALTH

v.

JUSTIN PAGE

DEFENDANT'S APPLICATION FOR FURTHER APPELLATE REVIEW

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MAY 2025

REQUEST FOR FURTHER APPELLATE REVIEW

The defendant, Justin Page, respectfully requests that the Supreme Judicial Court (SJC) grant further appellate review in his case. The defendant's appeal raises an important question about the continued vitality of the community caretaking exception to the warrant requirement. The defendant argued to the Appeals Court that the community caretaking exception no longer exists in the wake of the Supreme Court's decision in *Caniglia v. Strom*, 593 U.S. 194 (2021). In support of this argument, the defendant highlighted the questionable origin of the community caretaking exception and emphasized that the Supreme Court has never actually recognized this doctrine as a valid exception to the warrant requirement. The defendant further explained how the various opinions in *Caniglia* each reflected deep skepticism for the exception. The defendant alternatively asserted that, even if the exception does exist, its scope does not extend to justify a warrantless search of a person's backpack.

The Appeals Court disagreed with the defendant's argument and ruled that the community caretaking exception remains viable

in the aftermath of *Caniglia*.[1] The panel concluded that the exception remains valid until the Supreme Court says otherwise. The panel further ruled that the scope of the community caretaking exception extends to allow a warrantless search of a person's backpack. In reaching this conclusion, the panel did not cite a single case in which the exception has been extended this far.

The SJC should grant further appellate review to address the continued validity and, if necessary, the scope and applicability of the community caretaking exception. The Appeals Court was bound by the SJC's precedent applying the community caretaking exception and thus could not truly consider whether the exception survived the Supreme Court's decision in *Caniglia*. It is only the SJC that can properly address this important issue. The same is true with respect to the scope and applicability of the exception. These issues need to resolved or else there will continue to be considerable uncertainty about the exception. In its current state, the community caretaking exception is a muddled doctrine of

[1] A copy of the Appeals Court's published decision is appended to this application. The citation for the decision is *Commonwealth v. Page*, 105 Mass. App. Ct. 532 (2025).

questionable constitutional legitimacy with an unknown scope and no discernible standard for its application. The SJC should take this opportunity to clarify whether the exception remains viable in the wake of *Caniglia* and, if it does, to provide precise contours for its scope and applicability.

STATEMENT OF PRIOR PROCEEDINGS

On April 1, 2022, the Franklin County Superior Court issued indictments charging the defendant with (1) unlawful possession of a firearm, (2) unlawful possession of a loaded firearm, (3) possession of a firearm while committing a felony, (4) larceny of a firearm, and (5) possession of heroin with the intent to distribute. With respect to count one, the indictment charged the defendant with a sentencing enhancement pursuant to G. L. c. 269, s. 10G(a).

The defendant filed a motion to suppress the firearm and the drugs that formed the basis for the prosecution against him. The motion judge (Mason, J.) held an evidentiary hearing over the course of two days beginning on January 6, 2023, and ending on February 7, 2023. The judge took the matter under advisement at the close of the hearing. The judge issued a decision denying the defendant's motion to suppress on February 10, 2023.

The defendant tendered a conditional plea pursuant to Mass. R. Crim. Pro. 12(b)(6) on October 4, 2023. The terms of the plea were agreed to by both sides. The defendant agreed to plead guilty to the charge of (1) unlawful possession of a firearm and (5) possession of heroin with the intent to distribute. He also agreed to plead guilty to the sentencing enhancement on count one. In exchange for the defendant's plea, the Commonwealth agreed to dismiss the other charges and to allow the defendant to preserve his right to appeal the denial of his motion to suppress. The parties agreed on a sentence of three years in state prison on count one and two years of probation on count five. The court accepted the defendant's plea and sentenced the defendant in accordance with the agreement. The defendant filed a timely notice of appeal.

The Appeals Court docketed the defendant's appeal on March 19, 2024. The case was fully briefed and oral argument was held on February 5, 2025. The Appeals Court issued a published decision affirming the denial of the defendant's motion to suppress on May 13, 2025. The defendant is not seeking rehearing or modification in the Appeals Court.

STATEMENT OF FACTS

The facts relevant to the appeal are correctly stated in the Appeals Court's decision.

ISSUE ON WHICH FURTHER APPELLATE REVIEW IS SOUGHT

The defendant's appeal raises two issues involving the community caretaking exception to the warrant requirement:

1. Does the community caretaking exception continue to exist under the Fourth Amendment in the aftermath of the Supreme Court's decision in *Caniglia v. Strom*, 539 U.S. 194 (2021)?

2. If the exception remains viable, what is its scope and what is the legal standard for determining its applicability?

WHY FURTHER APPELLATE REVIEW IS APPROPRIATE

I. THE SUPREME COURT'S DECISION IN *CANIGLIA* RAISES CONSIDERABLE UNCERTAINTY ABOUT THE CONTINUED VITALITY OF THE COMMUNITY CARETAKING EXCEPTION.

The SJC should address the uncertainty surrounding the community caretaking exception to the warrant requirement. The continued vitality of the exception is uncertain in the wake of *Caniglia v. Strom*, 593 U.S. 193 (2021). The Supreme Court expressed deep skepticism for the exception in *Caniglia*. Numerous courts have recognized this skepticism and thus questioned

whether the exception truly exists.[2] In light of this uncertainty, the SJC should consider whether the exception remains viable. The Supreme Court has never adopted the exception and thus it remains an open question as to whether the exception is a constitutionally legitimate doctrine under the Fourth Amendment.

The exception has its roots in *Cady v. Dombrowski*, 413 U.S. 433 (1973). This case asked whether the police were constitutionally justified in searching the trunk of the defendant's vehicle. *Id.* at 442. Nowhere in the decision did the Court adopt a community caretaking exception to the warrant requirement.

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[2] *See Clemons v. Couch*, 3 F.4th 897, 904 (6th Cir. 2021) ("We now know, based on *Caniglia*, that the community-caretaker exception, to the extent it exists at all, does not apply to the home."); *Dahl v. Kilgore*, 2021 WL 3929226 at *5 (6th Cir. Sep. 2, 2021) ("[T]he Supreme Court's recent decision in [*Caniglia*] casts doubt as to whether the community caretaker exception exists outside the vehicular context, if at all."); *United States v. Wertenberger*, 2021 WL 3877686 (W.D. Mo. Aug. 10, 2021) ("Although the *Caniglia* holding was expressly limited to warrantless searches of a home, a fair reading of the opinion calls into question whether community caretaking is a standalone exception to the Fourth Amendment warrant requirement in those circumstances beyond the search of a home."); Ric Simmons, *Lange, Caniglia, and the Myth of Home Exceptionalism*, 54 Ariz. St. L. J. 145, 172 (2022) ("The second interpretation of *Caniglia* has little to do with home exceptionalism. Under this view, the Court abolished the community caretaking altogether—or, more accurately, claimed that such an exception never existed.").

However, one sentence in the opinion gave birth to the exception. That sentence reads as follows:

> Local police officers, unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.

Cady, 413 U.S. at 441.

This sentence was dicta and nothing about it suggested that the Supreme Court intended to create a new community caretaking exception. Yet courts from across the country latched onto this language and used it to justify the creation of such an exception.[3] The SJC and the Appeals Court followed this wave of momentum.[4]

While the community caretaking exception expanded amongst the lower courts, the Supreme Court said little about this exception

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[3] *See, e.g., United States v. Coccia*, 446 F.3d 233, 238 (1st Cir. 2006); *Ray v. Township of Warren*, 626 F.3d 170, 174-175 (3rd Cir. 2010); *State v. Tully*, 348 A.2d 603, 609 (Conn. 1974). *See also* Gregory Helding, *Stop Hammering Fourth Amendment Rights: Reshaping The Community Caretaking Exception With The Physical Intrusion Standard*, 97 Marq. L. Rev. 123, 149 (2013) ("[C]ourts have fallen like dominoes as the expansion of community caretaking has spread through American jurisprudence.").

[4] *See, e.g., Commonwealth v. Murdough*, 428 Mass. 760, 762-764 (1999); *Commonwealth v. McDevitt*, 57 Mass. App. Ct. 733, 736 (2003).

that it seemingly gave unintentional birth to in *Cady*. The Supreme Court used the term "community caretaking" in only one case in the four decades following its 1973 decision in *Cady*.[5] The Supreme Court ended its silence in *Caniglia v. Strom*, 593 U.S. 194 (2021). In *Caniglia*, the Court considered whether the exception can justify a warrantless search of a home. 593 U.S. at 196. The Court concluded that it cannot. *Id.* In reaching this conclusion, the Court stated that "[t]he First Circuit's 'community caretaking' rule . . . goes beyond anything this Court has recognized." *Id.* at 198. The Court framed its holding narrowly: The community caretaking exception cannot justify a warrantless entry into a home. *Id.* at 199. However, in doing so, the Court raised serious doubts about the existence of a community caretaking exception under the Fourth Amendment.

The majority opinion is laden with skepticism for the exception. Consider the following passage discussing the First Circuit's decision:

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[5] *See South Dakota v. Opperman*, 428 U.S. 364, 368 (1976) (referring to "community caretaking functions" of police).

> Citing this Court's statement in *Cady* that police officers often have noncriminal reasons to interact with motorists on public highways, the First Circuit extrapolated a freestanding community-caretaking exception that applies to both cars and homes.

Caniglia, 593 U.S. at 197.

If *Cady* in fact created a community caretaking exception, then the Court would have acknowledged as much. Instead, the Court stated that the First Circuit was responsible for creating this exception. This is not a semantical difference. By casting the community caretaking exception as a creation of the First Circuit, the majority opinion highlighted the fact that the Supreme Court has never endorsed the existence of such an exception. Without changing the result of the case, the Court could have explicitly adopted the exception yet limited its application to warrantless searches of vehicles. The Court instead declined to acknowledge the exception's existence whatsoever.

The concurring opinions raise further doubt about the exception. Justice Alito did not mince words; he explicitly stated that the exception does not exist:

> [T]here is no special Fourth Amendment rule for a broad category of cases involving "community caretaking."

. . . .

> The Court's decision in *Cady v. Dombrowski*, 413 U.S. 433 (1973), did not recognize any such "freestanding" Fourth Amendment category. The opinion merely used the phrase "community caretaking" in passing.

Caniglia, 593 U.S. at 200 (Alito, J., concurring).

Unlike Justice Alito's concurrence, the other two concurring opinions did not explicitly reject the exception. Chief Justice Roberts emphasized the utility of the emergency aid exception. *Caniglia*, 593 U.S. at 199-200 (Roberts, C.J., concurring). Without saying as much, the Chief Justice's point was clear: This case should have been argued and analyzed under the emergency aid exception, which the Court formulated in *Brigham City v. Stuart*, 547 U.S. 398 (2006), and not under the community caretaking exception, which the Court has never recognized. Justice Kavanaugh's concurrence stressed the same point. *Caniglia*, 593 U.S. at 204-208 (Kavanaugh, J., concurring). With respect to the community caretaking exception, he reemphasized that this exception is a creation of the lower courts. *Id.* at 205. Though each opinion in *Caniglia* is worded differently, they all deliver the same

message: There is no separate community caretaking exception that is distinct from the emergency aid exception.

Given the skepticism expressed in *Caniglia*, there is uncertainty about the continued vitality of the community caretaking exception. The SJC should do what the Appeals Court could not and address this uncertainty. In doing so, the Court should provide a definitive answer as to whether there is a community caretaking exception that operates distinctly from the emergency aid exception.

II. THERE IS A LACK OF CLARITY REGARDING THE SCOPE AND THE TEST FOR DETERMINING THE APPLICABILITY OF THE COMMUNITY CARETAKING EXCEPTION.

If the community caretaking exception remains viable, the SJC should address its scope and applicability. The community caretaking exception is a muddled doctrine with an undetermined scope and no established standard for its application. With respect to its scope, *Caniglia* established that the exception cannot justify a warrantless entry into a home. 593 U.S. at 196. Obviously, there are many warrantless searches and seizures that do not reach this level of constitutional intrusion. The warrantless search of the defendant's backpack is a prime example. The question remains as

to whether the exception can justify such a search. The Appeals Court concluded that the exception can reach this far because the SJC has never limited the scope of the doctrine.[6] However, the SJC has been careful in its expansion of the exception. The farthest the SJC has gone in applying the exception is to justify the brief detention of an individual.[7] Thus, while the SJC has never held that the exception cannot justify a warrantless search of a person's backpack, the Court has also never said that it can justify such a search. The scope of the exception will remain undefined until the SJC addresses this issue.

Moving past the issue of scope, the standard for applying the community caretaking exception may be the greatest source of uncertainty. The courts that have adopted the exception employ a

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[6] The Appeals Court has consistently expanded the scope of the exception without limitation. *See Commonwealth v. Cantelli*, 83 Mass. App. Ct. 156, 164-165 (2013) (relying on exception to justify warrantless entry into home). This expansion of the exception ran into a roadblock when the Supreme Court decided *Caniglia*. Despite the decision in *Caniglia*, the Appeals Court has not shown any hesitation to continue to expand the exception into uncharted territory. *See Commonwealth v. Demos D.*, 105 Mass. App. Ct. 193, 200-201 (2025) (exception justified patfrisk of juvenile).

[7] *See Commonwealth v. Armstrong*, 492 Mass. 341, 349-350 (2023) (exception justified twenty-minute detention of individual exhibiting odd behavior).

patchwork of different standards to determine its applicability.[8] The standard in Massachusetts is similarly inconsistent. The cases emphasize that the exception is applicable when police action is "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Armstrong*, 492 Mass. at 349, quoting *Cady*, 413 U.S. at 441. Yet there is no consensus as to how to apply this standard. Sometimes the focus is

[8] *See Hawkins v. United States*, 113 A.3d 216, 221 (D.C. 2015) (discussing different tests that courts have adopted for applying community caretaking exception); Michael R. Dimino, Sr., *Police Paternalism: Community Caretaking, Assistance Searches, and Fourth Amendment Reasonableness*, 66 Wash. & Lee L. Rev. 1485, 1494 (2009) ("The vagueness surrounding the definition of the community-caretaking category and the different standards governing the constitutionality of different types of community-caretaking searches indicate that more precision is needed. There is not a single community-caretaking doctrine. Rather, there are several different community-caretaking doctrines, but courts have not clarified the constitutional interests affected by those different kinds of searches."); Transcript of Oral Argument at 59, *Caniglia v. Strom*, 593 U.S. 194 (2021) (Sotomayor, J.) ("[I]'ve read the decisions of other circuits. They seem all to have different factors that make up community caretaking and I'm actually not sure what it means.").

on the motivation underlying the police action.[9] Other times the motivation of the police is irrelevant and the focus is on whether there was an objective basis for believing that the defendant's safety was in jeopardy.[10] The standard for applying the exception needs to sorted out. The oft-quoted dicta from *Cady* cannot be the test. The Supreme Court never intended to create a community caretaking exception in *Cady* and, if it had, it would have defined the standard for applying the exception with greater precision. If the community caretaking exception remains viable, the SJC should create a coherent test for determining its applicability. At a minimum, the Court should clarify whether the applicability of the exception depends on the subjective intent of the involved officers or not.

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[9] *See Commonwealth v. Knowles*, 451 Mass. 91, 95-96 (2008) (stating that Commonwealth has burden to prove non-investigatory purpose); *Commonwealth v. Lubiejewski*, 49 Mass. App. Ct. 212, 216 (2000) (exception did not apply to stop of motor vehicle because officer was motivated by investigatory purpose). *See also Commonwealth v. Entwhistle*, 463 Mass. 205, 219 n.8 (2012) (recognizing that "subjective noninvestigative intent is relevant to the community caretaking exception" under federal law).

[10] *See Commonwealth v. Fisher*, 86 Mass. App. Ct. 48, 51-52 (2014) (subjective intent of officer deemed irrelevant to analysis); *Commonwealth v. McDevitt*, 57 Mass. App. Ct. 733, 736 (2003) (same).

CONCLUSION

For the reasons set forth above, the Court should allow the defendant's application for further appellate review.

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By His Attorney,

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Dated: 5/23/25

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT
SUPPERIOR COURT

Franklin, ss.

Dkt. No. 2278CR00051

COMMONWEALTH
V.
JUSTIN R. PAGE

DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

Now comes the Defendant, through his attorney, and moves pursuant to Article 14 of the Mass. Declaration of Rights and the 4th Amendment of the U.S. Constitution, Article IV, Section 2 Clause 1 of the U.S. Constitution, that any drugs seized resulting from the search of his vehicle, the backpack in his vehicle by the Greenfield Police and subsequent statements made to the police be suppressed.

As reasons wherefore,

1. The vehicle was searched without a search warrant;
2. Closed containers within the vehicle were searched without a warrant;
3. No exigency that would allow for an exception to the search warrant requirement existed;
4. The vehicle was not towed or inventoried for that purpose;
5. A search of the defendant's person subject to arrest does not extend to his vehicle or property not on his person;
6. No reasonable suspicion existed that a crime had been committed;

7. No Miranda warnings were given;

8. The Defendant was subject to custodial interrogation.

Allegations.

Off-duty plain clothes police husband and wife officers driving an unmarked vehicle responding to a call for a welfare check on a person who appeared slumped over behind the vehicle of a car lawfully parked in a shopping plaza parking lot. With lights activated and announcing their status as police officers, the female ununiformed officer entered the vehicle through a door previously opened by the reporting civilian party. Believing that the defendant might be suffering an overdose, the female ununiformed officer rubbed the chest of the defendant, and the defendant awoke. The female ununiformed officer believed that there could be a number of medical conditions from which the defendant might be suffering.

The female uniformed officer allegedly had the defendant spin his feet out of the vehicle, at which point he started to try to put his feet back in the vehicle. The defendant tried to close the door but the ununiformed female officer would not allow him to do so and the officer had to fight to keep the door open. The Defendant attempted to lock the door before closing it.

The ununiformed male officer was subjectively afraid the defendant would drive away impaired, though the vehicle was not in operation in any way. A uniformed officer arrived on scene. The defendant allegedly reached for a backpack in the passenger seat and the uniformed officer ordered him to stop reaching for it. A second uniformed officer arrived and together the first uniformed officer controlled the defendant in the driver's seat. The ununiformed male officer attempted to open the passenger seat where the backpack was, but the door was locked.

The defendant allegedly, though under the immediate control of two uniformed officers, repeatedly reached for the backpack after the ununiformed male officer unsuccessfully attempted to open the door. The ununiformed male officer ordered his wife the ununiformed female officer to unlock the doors so he could get the backpack. She unlocked the door and he opened the door seized the backpack, unzipped it and searched for weapons. The ununiformed male officer indicated in his report that it was not his subjective intent to seize the backpack, but merely to make it safe for return to the defendant. During the search the ununiformed male officer found narcotics, cash, a knife and a small pistol. The defendant was then handcuffed.

The second uniformed officer, who was a DRE, informed the ununiformed male officer that the Defendant was "alert, aware of his surroundings and not in medical emergency." The Defendant was taken into custody and brought to the Greenfield police station for booking. The defendant was never mirandized and was subject to custodial interrogation where he allegedly made inculpatory statements about his knowledge of the items located in the backpack.

Issue Raised.

Whether the search of the vehicle in which the Defendant was seated, the contents therein was unlawful where there was no reasonable suspicion that a crime had been committed, that the Defendant posed any danger to the police and the defendant was "alert aware of his surroundings and not in medical emergency." Whether statements made during custodial interrogation was unlawful. *Miranda v Arizona*, 384 U.S. 436 (1966). Whether any post-seizure investigation and discovery of contraband should be suppressed as fruit of the poisonous tree. *Wong Sun v. United States*, 371 U.S. 471 (1963).

The Defendant has requested an evidentiary hearing.

Respectfully submitted,
Justin Page by and through his attorney,
/s/ Isaac Mass

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Dated: November 8, 2022

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT
SUPPERIOR COURT

Franklin, ss. **Dkt. No. 2278CR00051**

COMMONWEALTH
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DEFENDANT'S AFFIDAVIT IN SUPPORT OF HIS

MOTION TO SUPPRESS EVIDENCE

1. My name is Justin Page. I am the Defendant in the above captioned case.
2. I was arrested from the driver's seat of my vehicle.
3. I did not give consent to search my vehicle or backpack.
4. No one else gave consent to search my vehicle or backpack.
5. I was not shown any warrant for the search of my vehicle or backpack.
6. I did not do anything that would make the officers fearful for their safety.
7. I was not experiencing a medical incident during my interaction with the police.
8. I was not brought to the hospital and no medical treatment was provided to me
9. My vehicle was lawfully parked when I was arrested.
10. I was never given Miranda warnings
11. I was asked questions about the case when I was in custody
12. I would not have answered those questions if I knew I had a right to remain silent and had a right to talk with an attorney

Signed under the pains and penalties of perjury,

_____
Justin Page

Dated: 11/8/22