No. 101385-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

ON ISSUES SURROUNDING THE COMMUNITY CARETAKING

EXCEPTION CERTIFIED FROM THE COURT OF APPEALS

COA NO. 38426-8-III

RESPONDENT'S BRIEF

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Caniglia v. Strom, 593 U.S. ___, 141 S. Ct. 1596, 209 L.Ed.2d 605 (2021), did not invalidate warrantless entries into residences to render emergency aid or for health and safety reasons.

A. Exigent circumstances still provide an exception to warrant requirement post-*Caniglia*.

We constantly analyze the proper role of the police. On one hand, society recognizes the important role of police to act as "community caretakers" to render emergency aid, locate missing persons, perform welfare checks, return lost children to parents, and protect property. *See, e.g.*, *State v. Acrey*, 148 Wn.2d 738, 748-49, 64 P.3d 594 (2003). On the other hand, recent police abuses, especially in communities of color, have resulted in calls for comprehensive police reform. *See* Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 Yale L.J. 778 (2020-2021). Even the seemingly benign exercise of police powers could result in misuse and should be checked. *See* Michael R. Dimino, Sr., *Police Paternalism: Community Caretaking, Assistance Searches and Fourth*

Amendment Reasonableness, 66 Wash. & Lee L. Rev. 1485 (2009).

In answer to that ongoing evaluation, when it comes to entering homes, the Supreme Court in *Caniglia v. Strom*, 593 U.S. ___, 141 S. Ct. 1596, 1598 (2021), held that there is no "freestanding community caretaking exception" to the warrant requirement of the Fourth Amendment for searches and seizures. In *Caniglia* the police entered the home of a suicidal man who was at the hospital to remove his firearms at his wife's request out of a speculative concern he might use them against himself or others when he returned home. Using the community caretaking exception to warrants for motor vehicles recognized in *Cady v. Dombrowski*, 413 U.S. 433, 37 L. Ed. 706 (1979), the First Circuit Court of Appeals applied this doctrine to the pure-at-heart motives of the police when entering homes. This approach did not last long and was quickly discharged by *Caniglia*. Calls to limit the expanding application of *Cady* had been percolating even before *Caniglia*. *See* Alyssa L. Lazar, *Protecting Individuals'*

Fourth Amendment Rights against Government Usurpation: Resolutions to the Problematic and Redundant Community Caretaking Doctrine, 57 Duq. L. Rev. 198 (2019).

Caniglia was more of a reining in of the creeping police paternalism permitted by the First Circuit Court of Appeals than as a repudiation of unreasonable police conduct. *Caniglia's* importance is also that it settled a long-standing disagreement between the federal courts "on the precise contour of the community caretaking exception." *See Feis v. King County Sheriff's Dept.,* 165 Wn. App. 525, 545-47, 267 P.3d 1022 (2011)(for qualified immunity, "the extent, scope, and applicability of the community caretaking doctrine" was not settled at the time of the search.).

Within the confines of *Caniglia's* three page, unanimous decision, authored by Justice Thomas, there seemed to be no room for the historically recognized role of police to enter homes to perform health and welfare checks. However, three justices wrote concurring opinions encouraging us not to read the majority opinion so

expansively, specifically that *Caniglia* did not vitiate warrantless entry into a home under exigent circumstances. *Caniglia* 141 S. Ct. at 1600-05 (Roberts, C.J., Alito, J., and Kavanuagh, J., concurring).

The way to reconcile the majority opinion with the concerns of the concurring opinions is to apply *Caniglia's* reach to home entries where there is an "absence of a real exigency". *See* Chirstopher Slobogin, *Police as Community Caretakers: Caniglia v. Strom*, 2020-2021 Cato Supreme Court Review, 191, 193 (2021).

Court opinions post-*Caniglia* have continued to apply the emergency exception to warrantless entry. In *Sanders v. United States*, 141 S. Ct. 1646 (2021), without weighing the case on its merits, the Court remanded a case back down to the Eighth Circuit Court of Appeal for further consideration in light of *Caniglia*. Justice Kavanaugh, agreeing with the remand, wrote:

> [T]he fact that the Eighth Circuit used a now-erroneous label does not mean that the Eighth Circuit reached the wrong result. *Caniglia* did not disturb the Court's longstanding precedents that allow warrantless entries into a home in certain circumstances. See 593 U. S. ___, 141 S. Ct. 1596, ___ L. Ed. 2d ___, ante, at 1

> (Roberts, C. J., concurring). Of particular relevance here, the Court has long said that police officers may enter a home without a warrant if they have an "objectively reasonable basis for believing that on occupant" is "seriously injured or threatened with such injury." Brigham City, 547 U.S., at 400, 126 S. Ct. 1943, 164 L. Ed. 2d 650.

Upon remand, the Eighth Circuit again affirmed the denial of the suppression of the firearm found after a warrantless entry, but using the exigent circumstances analysis, noting that such exception survived *Caniglia*. *United States v. Sanders*, 4 F.4th 672, 677 (8th Cir. 2021), cert. denied, U.S., 142 S. Ct. 1161, 212 L. Ed. 2d 36 (2022). *Sanders* involved officers entering a home of a domestic violence call "to provide emergency assistance to anyone who might have been injured and to protect the children from imminent injury." *Id.* at 678.

In *State v. Ware*, 400 Wis.2d 118, 968 N.W.2d 752 (2021), Wisconsin's emergency aid exception was still valid post-*Canigila*. In *Ware* a warrantless entry into a garage to investigate a 911 call about a large amount of blood coming from a truck was upheld under the emergency aid exception where the officer believed there

was a need to render immediate aid even though he did not see a body or know if one was present. In *Ware*, just prior to the suppression hearing but just after *Caniglia*, the State in its briefing "relabeled" the terminology from community caretaking to emergency aid but used the same analysis. *State v. Ware*, 400 Wis. 2d at 127.

In *State v. Samuolis*, 344 Conn. 200, 217, 278 A.3d 1027 (2022), there was no ambiguity in the court's mind that after *Caniglia* "warrantless entry is still permitted to assist someone who is injured or facing imminent injury." *Samuolis* involved police entry into a home to locate an elderly man, who resided with his mentally ill son, but who had not been seen for quite a while by his concerned neighbors.

B. Washington's exigent circumstances exception survive *Caniglia*.

Simply put, Washington State does not have a stand-alone community caretaking exception for searches of homes absent exigent circumstances, the type of which *Caniglia* repudiated. Washington State courts have imposed stricter conditions on the community caretaking

exception recognizing "a real risk of abuse in allowing even well-intentioned stops to assist." *State v. Harris,* 9 Wn. App. 625, 629, 513 P.3d 854 (2019)(quoting *State v. Kinzy*, 141 Wn.2d 373, 388, 5 P.3d 668 (2000)). Instead, Washington's version of the community caretaking exception for residences requires an exigent circumstance, namely that an officer have a subjective and reasonable belief that either someone inside the home is need of emergency aid requiring immediate assistance or in need of health and safety assistance. See *State v. Boisselle*, 194 Wn.2d 1, 448 P.3d 19 (2019)(emergency aid function); *State v. Weller*, 185 Wn. App. 913, 344 P.3d 695 (2015)(health and safety check).

Washington courts have been loathe to extend its version of the community caretaking function to residences where there has not been a valid need to render immediate assistance. For example, in *Boisselle*, 194 Wn.2d 1, the facts overwhelmingly showed the officers were investigating a murder and not truly seeking to provide assistance. In *State v. Thompson*, 151 Wn.2d 793, 92 P.3d

228 (2004), an officer was not allowed to rely on the community caretaking exception to enter a trailer to remove an item of clothing to give back to its owner.

C. Warrantless entry into the home satisfied both prongs of the community caretaking exception for either a health and safety check or rendering emergency aid.

Deputy Bill Black was aware of the following information prior to making his warrantless entry into the Teulilo home and discovering Peggy's murdered body. Peggy was in a troubled marriage. Peggy had made multiple domestic violence (DV) reports to law enforcement. PR 12, 33, 39, 40, 48, 50. Peggy's husband, Ului, had threatened to blow her brains out with a gun. RP 15. Peggy had given the gun to her friend, Michael Saenz, but he had given it back to Peggy. RP 23-24.

On July 25, 2018, when Peggy did not show up for her job as a care provider for Michael's elderly mother, Michael called to report her missing. RP 12. Peggy was supposed to take Michael's mother to a hair appointment that morning. *Id.* It was unusual for Peggy not to have called

Michael that morning because she would usually call if she were going to be late or had to miss work. RP 23.

Black read that Peggy had even contacted the sheriff's office the previous evening with DV concerns. RP 12.

Peggy and Ului lived in a fifth-wheel travel trailer surrounded by an orchard. RP 13. Black responded to the home and observed a car parked there. RP 16. Black spoke to the orchard owner who was nearby on a tractor and confirmed the trailer was Peggy's home. RP 16, 50. Black knocked on the trailer announcing the Sheriff's office and calling for Peggy, first on the tongue part of the trailer and then on the front door. RP 16. Black knocked on the outside of the trailer loud enough for someone inside the home to hear but got no answer. RP 17.

Black spoke to the orchard owner again and learned of Ului's place of employment. *Id.* Black called Ului at work and let him know he needed to speak with Peggy and asked Ului if she knew where she was. RP 18. Ului said Peggy should be at work. *Id.* When Black asked about the vehicle in the driveway, Ului confirmed it was Peggy's car.

Id. Ului provided Black with a phone number that Peggy has obtained the night before. *Id.*

Black called Peggy's phone several times but no one picked up the line. RP 20, 23. Black was standing just outside of the trailer when he made the calls to Peggy's phone numbers and could not hear any phone ringing. Id.

Black contacted his supervisor, Sgt. Tyler Caille, and after informing him of the situation, Caille advised Black to check the door to see if it was locked, and if it was unlocked to open the door and announce Sheriff's office to see if he could get anyone to come to the door. RP 22.

Before knocking on the door, Black called Mr. Sines directly to see if he had recently heard from Peggy. During that call Black learned of the gun being returned to Peggy. RP 23, 44. Black attempted one last time to call Peggy's phone, but got no answer. RP 23.

Black then checked the front door and found it unlocked. RP 24. Black opened the door, and, without stepping inside, announced himself and called out for Peggy. RP 24-25. When Black first opened the door he could only see

the hallway wall directly across from the open front door. *Id.*

Black shut the door and again called his supervisor. RP 25. This time Sgt. Caille directed Black to do a cursory sweep to see if Peggy was inside and in need of assistance. RP 25-26.

Black again opened the door, went inside, and looked inside first to the left and then to the right. RP 26. When he looked to the left, he observed the kitchen living room area but did not observe anyone. *Id.* When Black looked to the right, he saw Peggy slumped on the floor at the end of the bed facing him – there was blood everywhere, severe trauma to her face, and she was obviously deceased. RP 26-28. Black backed out of the trailer and called in what he found. RP 29.

The facts show that Deputy Black's warrantless entry was justified either as a health and safety check or to render emergency aid. The State's discussion on the scope and limitations of the two exceptions is more fully

contained in its briefing submitted to the court of appeals and now before this court.

D. Subsequent re-entries by Black and other deputies prior to securing the warrant do not merit suppression.

Any discussion about Black's re-entries and entries by other deputies are not germane to the limited and precise issues before this court. Black re-entered to see if there was a gun. RP 29-30. Black reentered again with a camera and took pictures of the interior of the trailer. RP 31. And as before, in none off the entries did Black touch or manipulate anything. *Id.* When Chief Steven Groseclose entered the home briefly to confirm Dep. Black's observations, he did not touch or move anything. RP 74-75. Detective Jason DeMeyer stood on the porch and without stepping inside took one photograph of the interior. RP 84.

The State acknowledges here, as it did below, that if Black's initial warrantless entry was improper under any exception to the warrant requirement, then the case is at an end, and any discussion about anything else is moot.

Should the subsequent entries be of interest to this court's analysis on the limited issues, the State's response is that those entries would not have altered what Black knew and saw in the first instance, which would have satisfied probable cause for the issuance of the search warrant and the resulting investigation. Because the defense did not challenge the search warrant below, the trial court, and the State, were not given an opportunity to more fully address the warrant, and, as such, those documents are not part of the record.

However, because this Court has granted interlocutory review, this Court should remand for further proceedings consistent with its opinion. Other un-argued doctrines may excuse valid exigent circumstances entry because of de minimis subsequent entries that did not result in more evidence being collected than what was in plain view of the initial, valid entry. The plain view doctrine has been extended to situations where officers entered a residence to perform their community caretaking function under either prong. See *State v. Smith*, 177 Wn.2d 533, 541-42, 303

P.3d 1047 (2013)(emergency exception); and *State v. Thompson*, 151 Wn.2d 793, 92 P.3d 228 (2004)(health and safety check). So long as subsequent searches do not exceed the scope of the initial, legitimate intrusion, then evidence subsequently seized or observed will not be suppressed. *State v. Stevenson*, 55 Wn. App. 725, 732, 780 P.2d 873 (1989)(overturned on other grounds by *In re Pers. Restraint of Brooks*, 197 Wn.2d 94, 480 P.3d 399 (2021)).

Had these additional entries been challenged below in the context of the search warrant, the state proffers it would have been able to argue, "a search warrant is not rendered totally invalid if the affidavit contains sufficient facts to establish probable cause independent of the illegally obtained information." *State v. Coates*, 107 Wn.2d 882, 887, 735 P.2d 64 (1987).

Since the subsequent searches did not yield any additional evidence than what Black initially observed in plain view, they should not be cause, even if they were illegal, for upending the remainder of the case.

Respectfully submitted this 22nd day of November, 2022

I certify that the word count for this document does not exceed 2,500 words.

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CERTIFICATE OF SERVICE

I, W. Gordon Edgar, hereby declare that on this date, I caused to be served a true and correct copy of the foregoing Respondent's Brief in case no. 101385-0 upon the following parties in interest by e-mail service by prior agreement (as indicated), to:

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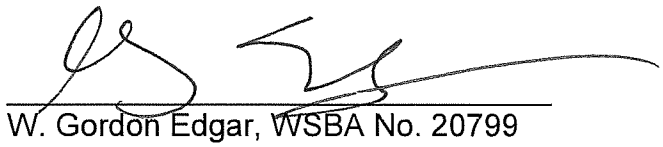
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed in Waterville, Washington this 22nd day of November, 2022.



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