101385-0

THE SUPREME COURT

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

ULUI LAKEPA TEULILO, PETITIONER

DISCRETIONARY REVIEW FROM THE SUPERIOR COURT OF DOUGLAS COUNTY

AMENDED BRIEF OF AMICUS CURIAE

WASHINGTON ASSOCIATION OF PROSECUTING ATTORNEYS

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I. SUMMARY

Government actors, including firefighters, police officers, and first responders, might have occasion to enter a home without a warrant to perform community caretaking functions. Following *Caniglia*,[1] the community caretaking doctrine is, properly understood, not a freestanding doctrine which permits warrantless entry into a home for every community caretaking function performed by any government actor. *Caniglia,* however, did not hold that every warrantless entry to provide aid is unconstitutional. Rather, certainly warrantless entries are lawful based on the government actor's function and the circumstances presented.

The emergency aid doctrine is either a distinct justification for a warrantless entry into a home based on existing exigencies,

[1] *Caniglia v. Strom*, 141 S. Ct. 1596, 209 L. Ed. 2d 605 (2021).

following *Stuart*[2] and *Caniglia*, or a critical community caretaking function that has been specifically ratified in *Stuart* and *Mincey*.[3] Regardless, the emergency aid doctrine survives *Caniglia*.

II. INTEREST OF AMICUS CURIAE

The Washington Association of Prosecuting Attorneys (WAPA) represents the elected prosecuting attorneys of Washington State. Those persons are responsible by law for the prosecution of all felony cases in this state and of all misdemeanors and gross misdemeanors charged under state statutes.

WAPA is interested in cases, such as this, which may have wide-ranging impacts on search and seizure law throughout this

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[2] *Brigham City v. Stuart*, 547 U.S. 398, 126 S. Ct. 1943, 1947, 164 L. Ed. 2d 650 (2006).

[3] *Mincey v. Arizona*, 437 U.S. 385, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (1978).

state. The first issue presented in the Court of Appeals' certification order is whether Washington's version of the community caretaking exception to the warrant requirement survives the recent decision in *Caniglia*, 209 L. Ed. 2d at 605.

III. ISSUE PRESENTED

Whether Washington State's emergency aid doctrine is consistent the United States Supreme Court's decision in *Caniglia v. Strom*, 141 S. Ct. 1596, 209 L. Ed. 2d 605 (2021)?

IV. STATEMENT OF THE CASE

The facts of this case are discussed in detail in the briefs of the parties. In short, Deputy William Black of the Douglas County Sheriff's Office made a warrantless entry into the home of Ului and Peggy Teulilo[4] to check on her welfare after being told she might be in danger; once inside, he discovered Peggy's

[4] For clarity this brief will to Peggy by her first name; no disrespect is intended.

body. *See* CP 85-91. Mr. Teulilo successfully sought discretionary review of the trial court's interlocutory decision denying suppression of the evidence based on the warrantless entry; the Court of Appeals certified the issue to this Court. Order Certifying Case to the Washington Supreme Court, filed October 19, 2022.

V. ARGUMENT

A. UNDER THE FEDERAL CONSTITUTION, NOT ALL COMMUNITY CARETAKING WILL JUSTIFY WARRANTLESS ENTRY INTO A HOME, BUT EMERGENCY AID MOST OFTEN WILL.

The Supreme Court has validated some warrantless entries into a home under the emergency aid doctrine. These authorities were cited with approval in *Caniglia*, even as the Court cautioned that it had never created a free-standing community caretaking exception to the warrant requirement for entry into a home. The narrower emergency aid doctrine still justifies, for example, a warrantless entry into a home when a government actor is

seeking to extinguish a fire, render aid to a seriously injured person, prevent further injury to a person, ensure no further victims are present at a homicide scene, or ensure the killer is not still at a homicide scene.

1. Community caretaking is a broad concept, and may not always justify warrantless entry into a home.

The Fourth Amendment protects against unreasonable searches and seizures. *Caniglia*, 141 S. Ct. at 1599. Warrantless searches and seizures which occur inside a home are presumptively unreasonable. *Payton v. New York*, 445 U.S. 573, 586, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980).

In *Cady v. Dombrowski*, 413 U.S. 433, 436, 93 S. Ct. 2523, 37 L. Ed. 2d 706 (1973), law enforcement officers had searched a vehicle in a rural location for Cady's service firearm, which had not been on his person or in the front seat or glove compartment on his arrest. The Supreme Court observed police 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." *Id*. at 441. The search of Cady's automobile was reasonable, in this circumstance, to effectuate the officer's function of keeping the community safe. *Id*. at 446-47.

As observed by LaFave, there are a multitude of situations where a government actor may need to render *emergency aid* under that specific doctrine. 3 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 6.6(a) (2022). By contrast, the number of ways that government actors may need to render *community caretaking* short of emergency aid "are so varied that generalization is virtually impossible." *Id*. at § 6.6(c) (listing examples).

The officers in *Caniglia* responded to a report that the petitioner was suicidal, after the petitioner and his wife had argued. 141 S. Ct. at 1598. Although the petitioner denied the accusation, the responding officers believed the petitioner posed a risk to himself or others. *Id*. The petitioner agreed to go to the hospital for a psychiatric evaluation, on the condition that officers promise not to confiscate his firearms. *Id*. Once the ambulance had taken petitioner away from the home and his firearms, however, the officers entered the home without a warrant and seized the weapons. *Id*.

The community caretaking function was the same in both cases: securing firearms. However, the risk of an unsecured weapon in a car is greater than in a home. Furthermore, a person's home enjoys more protection than a person's vehicle. The Supreme Court observed that a search reasonable for an automobile is not necessarily reasonable for a home. *Id*. at 1600.

Reasonableness under the Fourth Amendment turns on the facts and circumstances for each case; community caretaking is not a freestanding general exception that justifies every warrantless entry onto property. *Id*. at 1599. Ultimately, the Court held that warrantless entry into the home to seize the firearms of an allegedly suicidal person was not reasonable within the meaning of the Fourth Amendment, distinguishing *Cady*. But, as mentioned, the Court briefly cited emergency aid cases with approval. *Id*. at 1599.

2. Emergency aid is a narrow concept and will most often justify warrantless entry into a home.

Although warrantless entries into a home are presumptively unreasonable, such an entry may be rendered reasonable by "the exigencies" of a situation. *Mincey*, 437 U.S. at 393-94. For example, government actors may make a warrantless entry onto private property to "fight a fire and investigate its cause," "prevent the imminent destruction of

evidence," or engage in "hot pursuit of a fleeing suspect." *Stuart*, 547 U.S. at 403 (internal citations and quotations omitted). This principle is well-established:

> a warrant is not required to break down a door to enter a burning home to rescue occupants or extinguish a fire, to prevent a shooting or to bring emergency aid to an injured person. The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency. Fires or dead bodies are reported to police by cranks where no fires or bodies are to be found. Acting in response to reports of 'dead bodies,' the police may find the 'bodies' to be common drunks, diabetics in shock, or distressed cardiac patients. But the business of policemen and firemen is to act, not to speculate or meditate on whether the report is correct. People could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process. Even the apparently dead often are saved by swift police response. A myriad of circumstances could fall within the terms 'exigent circumstances' referred to in *Miller v. United States*, *supra*, e.g., smoke coming out a window or under a door, the sound of gunfire in a house, threats from the inside to shoot through the door at police, reasonable grounds to believe an injured or seriously ill person is being held within.

Wayne v. United States, 318 F.2d 205, 212 (D.C. Cir. 1963) (Burger, J., concurring).

The above passage from *Wayne* was cited to with approval by the Supreme Court when it recognized the Fourth Amendment permits police to enter a home without a warrant when the home is the scene of a homicide "to see if there are other victims or if a killer is still on the premises." *Mincey*, 437 U.S. at 392.

The passage was again cited when the Court approved application of the emergency aid doctrine inside a dwelling to prevent further violence. *Stuart*, 547 U.S. at 403; *see also Kentucky v. King*, 563 U.S. 452, 460, 470, 131 S. Ct. 1849, 179 L. Ed. 2d 865 (2011) (warrantless entry into an apartment permissible to prevent the destruction of evidence). The Court expressed "law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." *Stuart*, 547

U.S. at 403 (citing *Michigan v. Tyler*, 436 U.S. 499, 509, 98 S. Ct. 1942, 56 L. Ed. 2d 486 (1978)).

In *Stuart*, officers responded to complaints about a loud house party at approximately 3 a.m. *Id*. at 406. As they approached the house, they could hear a tumultuous altercation underway. *Id*. The officers peered into the front windows and, unable to see anything, proceeded around back to investigate further. *Id*. From the back yard they could observe a "fracas" taking place inside the kitchen, including one party-goer striking another person in the face. *Id*. They entered the home to end the fight. *Id*.

The Court held the entry into the home complied with the Fourth Amendment, and reasoned the officers had an objectively reasonable basis for believing both that the injured adult might need help and that the violence in the kitchen was just beginning. *Id*. at 406-7. The Court observed "[t]he role of a peace officer

includes preventing violence and restoring order, not simply rendering first aid to casualties." *Id*. at 406. The warrantless entry was reasonable under "the exigencies of the situation." *Id*. at 403.

Notably, the Court appeared to treat the emergency aid doctrine as a stand-alone doctrine, rather than confined within the community caretaking doctrine.[5] To that point, the Supreme Court cited *Stuart* itself with approval in *Caniglia*. 141 S. Ct. at 1599. The Supreme Court explained the community caretaking label in *Cady* was intended as an observation that law enforcement officers "perform many civic tasks" beyond criminal investigation, not that law enforcement had an "open-

[5] A respected treatise has recognized that the emergency aid doctrine had traditionally fallen within the ambit of community caretaking functions, but the *Stuart* opinion effectively treated the exception as an independent justification under the exigent circumstances doctrine. 3 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 6.6(a) n.7 (2022) (October 2022 update).

ended license to perform them anywhere." *Id*. at 1600. Indeed, the Fourth Amendment permits warrantless entry into the home when the circumstances objectively justify entry to render emergency aid. *Stuart*, 547 U.S. at 404-5.[6] Nonetheless, while the scope of the original entry may be limited, an expansion may be further justified by additional doctrines. *See Mincey*, 437 U.S. at 393.

3. Conclusion.

The community caretaking label encompasses many different tasks and situations. By contrast, the emergency aid

[6] The objective standard applies to federal constitutional claims only; this Court has modified the federal test to include a subjective component. *State v. Kinzy*, 141 Wn.2d 373, 386, 5 P.3d 668 (2000). This modification does not appear to originally be sourced from the State constitution. *See id*. at 384 n.33; *State v. Loewen*, 97 Wn.2d 562, 568, 647 P.2d 489 (1982) (citing Wisconsin decisional authority); *but see State v. Boisselle*, 194 Wn.2d 1, 9, 448 P.3d 19 (2019). Regardless, the objective reasonableness of an intrusion alone is not sufficient to satisfy the state constitution, under settled Washington law.

doctrine applies in specific emergency situations such as, law enforcement entering a home to render emergency assistance to an injured occupant or to prevent future injury to an occupant, or firefighters entering a home to extinguish a fire.

There are two reasonable interpretations of the foregoing cases: the emergency aid doctrine is either outside the scope of generalized community caretaking functions as an independent exigent circumstance or survives the holding of *Caniglia* because this particular function is critical to ensuring public safety. The *Caniglia* Court spoke of *Mincey* or *Stuart* with approval; the cases were not overruled. Regardless, *Caniglia* does not forbid a government actor from entering a home without a warrant to render emergency aid.

B. WASHINGTON LAW ALREADY DISTINGUISHES BETWEEN COMMUNITY CARETAKING AND EMERGENCY AID AND PERMITS WARRANTLESS ENTRIES TO RENDER EMERGENCY AID.

Washington has adopted the emergency aid doctrine. While unclear whether the doctrine is an exigency doctrine justifying an invasion of the privacy rights guaranteed by the State constitution, or a critical community caretaking function that justifies a warrantless entry, the result is the same. A government actor may still enter a home without a warrant to render emergency aid.

1. History of community caretaking functions and the emergency aid doctrine in Washington.

The first mention of the federal emergency aid doctrine in this Court appears to have occurred in *Loewen*, 97 Wn.2d at 568, (citing *Mincey*, 437 U.S. 385). As mentioned, *supra* n. 5, in this case this Court first adopted a subjective component of the test, citing *State v. Prober*, 98 Wis.2d 345, 297, N.W.2d 1 (1980).

By contrast, this Court's first mention of *Cady*'s community caretaking functions emerged briefly in *State v. Houser*, 95 Wn.2d 143, 151, 622 P.2d 1218 (1980). Although the mention was brief, *Houser* recognized that *Cady* stood only for the proposition that police officers perform a variety of activities described as community caretaking "functions," not that community caretaking was a free-standing exception to the warrant requirement for all possible activities. *Id*.

In *Kinzy*, 141 Wn.2d 373, this Court recounted the above history, and observed it had not yet adopted the federal exception to the warrant requirement. After considering several Court of Appeals opinions, this Court formally adopted a factor test to determine whether a community caretaking "exception" applied to the warrant requirement. *Id*. at 385-86, 394. However, the Court distinguished between "routine checks on health and safety," as a community caretaking function pursuant to *Cady*,

and situations involving "emergency aid." *Id*. at 386-87. This Court observed "[b]oth situations may require police officers to render aid or assistance. But compared with routine checks on health and safety, the emergency aid function involves circumstances of greater urgency and searches resulting in greater intrusion." *Id*. at 386 (footnotes omitted).

2. The existing test for emergency aid complies with *Caniglia*.

Boisselle, 194 Wn.2d 1, specifically addressed the emergency aid doctrine. This Court clarified and simplified Washington's emergency aid doctrine, as intervening opinions had added additional factors to the test. *Id*. at 9-14. In doing so, this Court again distinguished between these two non-criminal investigative functions. *Id*. at 13.

This Court observed that "routine check on health and safety" was one function, while "emergency aid" was a separate and independent function. *Id*. at 12. Community caretaking

functions involved situations such as delivering messages, "giving directions, searching for lost children, assisting stranded motorists, and rendering first aid." *Id*. at 10; *see also* JUSTICE CHARLES W. JOHNSON AND JUSTICE DEBRA L. STEPHENS, *Survey of Washington Search and Seizure Law: 2019 Update*, 42 Seattle U.L.Rev. 1277, 1403-5 (2019) (section 5.4). Despite listing rendering first aid as a community care taking function, this Court also recognized the emergency aid function arises from an officer's "responsibility to come to the aid of persons believed to be in danger of death or physical harm." *Boisselle*, 194 Wn.2d at 12 (citing *Kinzy*, 141 Wn.2d at 386 n.39). Distinguishing routine checks on health and safety, this Court reasoned the emergency aid function involves "circumstances of greater urgency and searches resulting in greater intrusion." *Boisselle*, 194 Wn.2d at 12.

In adopting the current factor test for whether the emergency aid doctrine applies, this Court specifically held:

> the emergency aid function of the community caretaking exception applies when (1) the officer subjectively believed that an emergency existed requiring that he or she provide immediate assistance to protect or preserve life or property, or to prevent serious injury, (2) a reasonable person in the same situation would similarly believe that there was a need for assistance, and (3) there was a reasonable basis to associate the need for assistance with the place searched.

Id. at 14.

3. *Boisselle* is consistent with *Stuart*, *Mincey*, and *Caniglia*.

Caniglia simply disapproved of the notion that all community caretaking functions by any government actor might conceivably justify a warrantless entry. The holding of *Boisselle*—which is applicable only to emergency aid situations—did not create or condone such a generalized community caretaking exception. The holdings of *Stuart* and *Mincey* remain undisturbed, as explained above. Those cases

approve of warrantless police entry into a home when the circumstances are dire enough to justify the intrusion.

The first factor of Washington's test narrows emergency aid to situations where a warrantless entry is made for the purposes of: (1) protecting life or property; (2) preserving life or property; or (3) preventing serious injury. *Boisselle*, 194 Wn.2d at 14. These three situations have traditionally been recognized as situations requiring emergency aid. *Wayne*, 318 F.2d at 212. These situations correspond with the various holdings or statements of law present in *Stuart*, *Mincey*, and *Caniglia*.

C. DEPUTY BLACK'S WARANTLESS ENTRY IN THIS CASE WAS PROPER UNDER THE EMERGENCY AID DOCTRINE.

Here, Deputy Black had reason to believe that Peggy would be in need of emergency assistance when he was dispatched to check on her welfare. Her life had been threatened, she was not at work as scheduled and had not reached out to her

employer—which was not characteristic of her—her vehicle was at the home, and she did not respond to voice or telephone calls for 10 minutes. Under the above-described emergency aid doctrine, a reasonable person would have determined Peggy was critically injured inside, and unable to respond to inquiries for help. Every second is crucial when a person has a significant injury. A head injury, for example, may render one unconscious and could be fatal in moments, but emergency aid could save the victim. Deputy Black requested further guidance from his superiors in light of this apparent emergency. After entering, Deputy Black saw Peggy lying on her back near a bed, with blood on her body and the bed. The original exigency itself did not reasonably cease until Deputy Black fully entered the home, approached, and discovered Peggy was no longer alive.

The trial court appeared to analyze this case as a "routine check on health and safety," and did not fully perform an

emergency aid analysis. CP 89-90. However, the report Deputy Black received was that Peggy's life was in danger; this was not simply a "routine" health and safety check. The trial court, relying on the expansive concept of community caretaking functions, also did not appear to consider whether, for example, the independent source doctrine or the rule announced in *Mincey*, concerning a limited extension of the exigency to look further inside a home for additional homicide victims or a possible killer, applied.

Because review is interlocutory, this Court should remand for further proceedings, including the potential for additional briefing and factual development below.

VI. CONCLUSION

The emergency aid doctrine properly justifies a warrantless entry into a home, assuming the various components of the applicable test are met. Washington's version of the

emergency aid warrant exception survives *Caniglia*. For these reasons, WAPA respectfully requests this Court adhere to *Boisselle* in deciding this matter.

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Dated this 22 day of December, 2022.

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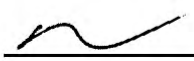

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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I certify under penalty of perjury under the laws of the State of Washington, that on December 22, 2022, I e-mailed a copy of the Amended Brief of Amicus Curiae in this matter, pursuant to the parties' agreement, to:

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SPOKANE COUNTY PROSECUTOR

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