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The Road to Fourth Amendment Erosion is Paved with Good Intentions: Examining Why Florida Should Limit the Community Caretaker Exception

Matthew C. Shapiro[*]

I. INTRODUCTION

If a well-intentioned police officer is performing acts unrelated to criminal activity, should he be allowed to enter your home without a warrant? The setting is the small town of Mayberry, North Carolina, and the time is 6:30 in the evening. Sheriff Andy Griffith has just stepped into the police station when he receives a call from Main Street Elementary School stating that local gas station attendant, Gomer Pyle, never picked up his son. Because the school is unable to contact Mr. Pyle, Sheriff Griffith proceeds to drive the six-year-old child home. In the past, Griffith, a well-meaning and affable officer, has been known to perform many duties within the town that are completely removed from his role as a crime-fighter. At the moment, he seeks to perform yet another task unrelated to combating criminal activity by reuniting a child with his absent-minded father. Even though the Pyle residence appears to be empty, and there are no signs of an emergency, Sheriff Griffith enters the home. Once inside, the sheriff discovers drugs and arrests Mr. Pyle when he returns home slightly thereafter. Was Andy Griffith's entrance into the home a search that would ordinarily be illegal under the Fourth Amendment? If so, should his actions be excused based on our society's need to have police officers involved in protective actions that go beyond traditional notions of law enforcement duties?

Fundamental to our system of government is the idea that freedom from unreasonable searches and seizures is an enumerated protection guaranteed by the Fourth Amendment. At the essence of this

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amendment stands the ideal that "a man's home is his castle," and thus, it enjoys a stringent safeguarding from government intrusion.[1] Nevertheless, the right to be free from unreasonable searches and seizures, as well as the need for privacy, are constantly being balanced against another important interest – the desire to have police officers not only protect us from crime, but also to provide what have come to be known as community caretaking functions.[2]

The ability of police officers to perform warrantless searches, while acting as a caretaker, is relatively settled: as long as police are acting in a role divorced from that of a crime-fighter, a warrantless search of an automobile or other form of transportation is constitutional.[3] The issue dividing jurisdictions is whether the community caretaker exception should extend into the home. In light of the recent Florida case of *Ortiz v. State*, this comment will argue that the community caretaker doctrine was never intended to apply to warrantless searches of homes, and that if allowed to do so, the State risks unnecessary curtailment of citizens' Fourth Amendment rights.[4] As such, Florida courts must continue to steadfastly recognize the United States Supreme Court's decision to limit the scope of the community caretaker doctrine.[5]

The community caretaker exception was first introduced in *Cady v. Dombrowski*.[6] There, the Supreme Court officially recognized that

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1 Wilson v. Layne, 141 F.3d 111, 132 (4th Cir. 1998) (stating that the fundamental principle behind the Fourth Amendment is that a man's home is his castle); *see also* ROBERT M. BLOOM, SEARCHES, SEIZURES, AND WARRANTS 49 (2003).

2 Today, "[a] police officer is a 'jack-of-all-emergencies.'" United States v. Rodriguez-Morales, 929 F.2d 780, 784-85 (1st Cir. 1991). "[He] is expected to aid those in distress, combat actual hazards . . . and provide an infinite variety of services to preserve and protect community safety." *Id.* at 784-85.

3 *See, e.g.*, Cady v. Dombrowski, 413 U.S. 433, 447-48 (1973); Ray v. Township of Warren, 626 F.3d 170, 174-75 (3d Cir. 2010); United States v. Erikson, 991 F.2d 529, 531 (9th Cir. 1993); State v. Gill, 755 N.W.2d 454, 458 (N.D. 2008); Riggs v. State, 918 So. 2d 274, 280 n.1 (Fla. 2005); Wood v. Commonwealth, 497 S.E.2d 484, 486-87 (Va. Ct. App. 1998); State v. Alexander, 721 A.2d 275, 279-80 (Md. Ct. Spec. App. 1998); People v. Davis, 497 N.W.2d 910, 913-14 (Mich. 1993).

4 Even though the community caretaker exception does not lend itself to a visualization of police officers combing through bedroom drawers in order to obtain evidence of a crime, a search within the meaning of the Fourth Amendment is nevertheless taking place. Whenever the government violates a *subjective* expectation of privacy that society recognizes as reasonable, a search has occurred. *See* Twilegar v. State, 42 So. 3d 177, 193 (Fla. 2010).

5 The Florida Constitution requires that courts construe search and seizure issues in accordance with the United States Supreme Court's interpretation of the Fourth Amendment: "The right of the people to be secure in their . . . houses . . . against unreasonable searches and seizures . . . shall not be violated . . . . This right shall be *construed in conformity* with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court." FLA. CONST. art. I, § 12 (emphasis added); *see also Cady*, 413 U.S. at 439 (noting the constitutional difference between house and car).

6 413 U.S. 433 (1973).

police officers provide certain community caretaking functions that are "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."[7] After identifying a difference in privacy expectations between motor vehicles and dwelling places, the Court concluded that certain types of caretaking searches were not unreasonable, and thus, a warrant was unnecessary for their undertaking.[8] From this premise arose the community caretaker exception.

In the time since *Cady*, courts have been inconsistent in their interpretation of the community caretaker doctrine. While some decisions have steadfastly recognized that the caretaker exception applies only to vehicles,[9] other courts have expanded the doctrine to allow warrantless searches within the home.[10] Many of these expansionist courts are merely confusing *Cady* with already-existing Fourth Amendment exceptions by labeling them all under the broad heading of "community caretaking functions."[11] As each Fourth Amendment exception has its own carefully-delineated justifications, standards, or even lack thereof, this is a dangerous practice.

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7 *Id.* at 441.

8 *Id.* at 439. "Although vehicles are 'effects' within the meaning of the Fourth Amendment, 'for the purposes of the Fourth Amendment there is a constitutional difference between houses and cars.'" *Id.* (quoting Chambers v. Maroney, 399 U.S. 42, 52 (1970)). Specifically, because of the frequency with which vehicles become disabled or are involved in accidents, police contact with them is substantially greater than contact with a home. *Id.* at 440-41.

9 *See, e.g.*, United States v. Erikson, 991 F.2d 529, 531 (9th Cir. 1993); United States v. Pichany, 687 F.2d 204, 208 (7th Cir. 1982); State v. Gill, 755 N.W.2d 454, 459-60 (N.D. 2008); Riggs v. State, 918 So. 2d 274, 279 (Fla. 2005); Wood v. Commonwealth, 497 S.E.2d 484, 487 (Va. Ct. App. 1998); People v. Davis, 497 N.W.2d 910, 914-15 (Mich. 1993).

10 *See, e.g.*, United States v. Nord, 586 F.2d 1288, 1290-91 (8th Cir. 1978) (affirming the right of the police to be on the premises as part of routine community caretaking functions); United States v. Rohrig, 98 F.3d 1506, 1522 (6th Cir. 1996) (allowing warrantless entry of a home to quell loud music); People v. Ray, 981 P.2d 928, 934-35 (Cal. 1999) (finding that a warrantless search was justified under community caretaking exception); Troy v. Ohlinger, 475 N.W.2d 54, 57-58 (Mich. 1991) (holding that an officer was justified to enter residence as part of community caretaker function).

11 Although there are many established exceptions to the warrant requirement, this comment will solely focus on two aside from the community caretaker doctrine. First, there is the exigent circumstances exception, which applies when police are searching for evidence or perpetrators of a crime. *See* discussion *infra* Part II.B; *Riggs*, 918 So. 2d at 278; Arango v. State, 411 So. 2d 172, 174 (Fla. 1982). When invoking the exigent circumstance exception, the government must demonstrate a grave emergency whereby there is not time to secure a warrant. *Ray*, 981 P.2d at 933. Second, the emergency aid exception grants police entrance to a residence to preserve life or render first aid, provided there is no intent to arrest or search. *See* discussion *infra* Part II.C.; *Riggs*, 918 So. 2d at 280 (citing Hornblower v. State, 351 So. 2d 716 (Fla. 1977)); *see also Ray*, 981 P.2d at 934 (advancing the idea that not all "caretaker" functions should be judged by same standard).

The Fourth Amendment was created based on a societal expectation of privacy within our dwellings.[12] In fact, physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.[13] To permit police officers to enter a residence, when they are acting solely within their community caretaker roles, would be to create yet another exception and thus risk having it envelope the general rule.[14] As Justice Scalia once stated, "the 'warrant' requirement [has] become so riddled with exceptions that it [is] basically unrecognizable."[15] Following the ongoing debate as to the scope of the community caretaker doctrine in *Ortiz v. State*, it is important that Florida courts definitively recognize that the doctrine does not and should not extend to warrantless searches of the home.[16] Firmly rooted exceptions, with clear-cut standards, already exist to aid law enforcement officers in perceived emergency situations.[17]

Part II of this comment provides a historical understanding of the principles behind the Fourth Amendment and addresses various recognized exceptions that have impacted courts' applications of *Cady*. Part III affirms that community caretaker searches, despite being devoid of any criminal activity, do invoke Fourth Amendment protections. Part IV surveys various jurisdictions' interpretations of *Cady*, placing emphasis on how confusion of already-existing doctrines, along with disregard for the express language in *Cady*, has largely been the cause of unnecessary expansion. Part V examines Florida's historical approach to the doctrine and analyzes why the recent decision in *Ortiz v. State* should have been decided solely on the basis of the emergency aid doctrine. Finally, Part VI considers the dangers posed by applying the *Cady* doctrine to dwellings and suggests that Florida courts steadfastly and expressly limit this Fourth Amendment exception to vehicles.

II. THE FOURTH AMENDMENT AND ITS EXCEPTIONS

The Fourth Amendment of the United States Constitution grants:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall

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12 *See* Payton v. New York, 445 U.S. 573, 585 (1980).

13 *Id.* at 586-87.

14 *Ray*, 981 P.2d at 941 (Mosk, J., dissenting) ("[S]uch an exception threatens to swallow the rule that absent a showing of true necessity, the . . . right to security and privacy in one's home must prevail.").

15 BLOOM, *supra* note 1, at 102.

16 *See generally* Ortiz v. State, 24 So. 3d 596 (Fla. 5th Dist. Ct. App. 2009) (en banc) (debating the proper scope of community caretaker exception), *appeal denied*, 37 So. 3d 848 (Fla. 2010).

17 *See* discussion *infra* Parts II.B-II.C.

> not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[18]

To comprehend the meaning behind this text, as well as fully understand why protection of the home is the crux of the Fourth Amendment, it is important to first grasp the historical developments that brought about its creation. By understanding its history, one can better evaluate the development of the amendment through judicial construction.[19]

The sanctity of one's home has long been considered a tenet of British liberty.[20] William Pitt, a British politician in the late eighteenth and early nineteenth centuries, expressed this sentiment unequivocally: "The poorest man may, in his cottage, bid defiance to all the forces of the Crown. It may be frail; its roof may shake . . . the rain may enter; but the King of England may not[.]"[21] During America's Revolutionary Period, colonists continued to support this ideal by expressing their grievances over the enforcement of tax laws by searches that were conducted absent evidence of wrongdoing.[22] Subsequent to the colonies declaring their independence, several states adopted constitutional safeguards regulating searches.[23]

Following the conclusion of the war and a brief period of governance under the Articles of Confederation, it became apparent that a stronger form of centralized government was necessary.[24] Throughout the debates over whether to ratify the proposed Constitution, Anti-Federalists argued strongly against the prospective government having the power to conduct general searches.[25] Richard Henry Lee, a prominent member of Congress, and a well-known Anti-Federalist, described protection from search and seizure as a right that, if not guaranteed, would be fatal to ratification.[26] Based on the need to achieve a

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18 U.S. CONST. amend. IV.

19 JACOB W. LANDYNSKI, SEARCH AND SEIZURE AND THE SUPREME COURT: A STUDY IN CONSTITUTIONAL INTERPRETATION 19 (1966).

20 *Id*. at 19-20.

21 *Id.* at 25.

22 ANDREW E. TASLITZ, RECONSTRUCTING THE FOURTH AMENDMENT: A HISTORY OF SEARCH AND SEIZURE, 1789- 1868 (2006).

23 LANDYNSKI, *supra* note 19, at 38.

24 *Primary Documents in American History, the Articles of Confederation,* http://www.loc.gov/rr/program/bib/ourdocs/articles.html (last visited Nov. 6, 2011).

25 TASLITZ, *supra* note 22, at 43.

26 *Id.* Although they eventually ratified the Constitution, Virginia's convention recommended that the first Congress include a passage "that every free person be 'secure from all unreasonable searches and seizures' and that warrants be based on 'legal and sufficient cause.'" *Id*.

compromise between the Federalist and Anti-Federalist factions, James Madison proposed the Bill of Rights – a series of articles protecting what were considered the basic principles of liberty.[27] Included in this draft proposal was what would become the Fourth Amendment to the United States Constitution.[28]

The relationship between the two Fourth Amendment clauses is unambiguous. The first clause, granting people the right to be free from unreasonable searches and seizures, stated the entitlement to be free from arbitrary governmental invasion.[29] In addition, it emphasized the requirements for a valid search.[30] The second clause interpreted the first by stating what kind of search was reasonable: a search carried out under the requirements stated in the Fourth Amendment.[31]

Today, protection of personal privacy expectations against unwarranted intrusion by the State remains the key function of the Fourth Amendment.[32] Specifically, "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed."[33] As is crucial to understanding why the holding in *Cady* must be limited to automobiles, of all the zones of privacy expectation, "[t]he home enjoys the strongest expectation of privacy and maximum Fourth Amendment protection. This stems from the intent of the Framers to ensure the sanctity of the home from invasion by the government."[34] However, it is also important to note that not all expectations of privacy receive the same degree of protection. "Whether an expectation of privacy is reasonable often depends on the physical setting involved."[35] The farther one moves from the boundaries of the home, the less the expectation of privacy is present.[36] The idea that privacy expectations vary based upon physical location is reflected in the way the Court succinctly differentiates between the automobile and the home in *Cady*.[37]

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27 *Exploring Constitutional Conflicts, the Bill of Rights: Its History and Significance*, http://law2.umkc.edu/faculty/projects/ftrials/conlaw/billofrightsintro.html (last visited Nov. 6, 2011).

28 *See id.*

29 LANDYNSKI, *supra* note 19, at 43.

30 *Id.*

31 *Id.*

32 Schmerber v. California, 384 U.S. 757, 767 (1966) (recognizing that the overriding function of the Fourth Amendment is to protect personal privacy against intrusion).

33 Payton v. New York, 445 U.S. 573, 585 (1980).

34 BLOOM, *supra* note 1, at 49.

35 *Id.*

36 *Id.*

37 *See* Cady v. Dombrowski, 413 U.S. 433, 440 (1973). "We made it clear in *Preston* that whether a search . . . is unreasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of each case and pointed out . . . that searches of cars *that are constantly moveable* may make the search of a car without a warrant a reasonable one *although*

Despite stringent constitutional protection when it comes to the domestic threshold, the Court has made it clear that the Fourth Amendment does not prohibit all warrantless searches; some searches may be deemed reasonable based on the totality of the circumstances.[38] In determining whether a warrantless search is reasonable, courts must balance two important factors: (1) an individual's Fourth Amendment interest to be free, and (2) the search's promotion of a legitimate governmental interest.[39] Keeping this crucial balance in mind, the Supreme Court has chosen to delineate certain exceptions to the presumption that a warrantless search is unreasonable. A firm understanding of these exceptions will elucidate how courts are interchanging established doctrines; the end result being the wrongful extension of the community caretaker exception.

A. The Community Caretaker Doctrine – *Cady v. Dombrowski*

In *Cady v. Dombrowski*, the Supreme Court recognized that police officers frequently perform functions that are unrelated to their role as crime-fighters.[40] These duties, undertaken with a concern for the general safety of the public, are often grouped under the description of community caretaking functions.[41] "Caretaking functions are performed by police officers because we expect them to take those steps that are necessary to 'ensure the safety and welfare of the citizenry at large.'"[42]

In *Cady*, an off-duty, intoxicated Illinois police officer crashed his rental car while in Wisconsin.[43] Acting under the belief that Chicago police were required to carry their service revolvers at all times, and not having found a revolver on Cady's person, Wisconsin police officers looked into the car's front seat and glove compartment for the weapon.[44] No revolver was found and the car was towed to a privately-owned garage.[45] After being formally arrested for drunk driv-

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the result might be opposite in a search of a home . . . or other fixed location." (emphasis added) (citing Preston v. United States, 376 U.S. 364, 366-67 (1964)).

38 *See* Ohio v. Robinette, 519 U.S. 33, 39 (1996).

39 People v. Bennett, 949 P.2d 947, 944 (Cal. 1998) (citing United States v. Jacobsen, 466 U.S. 109, 113 (1984)).

40 *Cady*, 413 U.S. at 441.

41 *Id.*

42 Ortiz v. State, 24 So. 3d 596, 600 (Fla. 5th Dist. Ct. App. 2009) (quoting 3 LAFAVE, SEARCH & SEIZURE § 5.4(c), at 201-02 (4th ed. 2004)).

43 *Cady*, 413 U.S. at 435-36.

44 *Id.* at 436.

45 *Id.*

ing, the respondent was taken to a local hospital where he lapsed into a coma and was hospitalized overnight for observation.[46]

While one of the Wisconsin policemen remained at the hospital, the other returned to the garage where the car had been stored in order to further search for the respondent's revolver.[47] Upon opening the car door, the officer found a flashlight that "appeared to have 'a few spots of blood on it.'"[48] The officer then opened the locked trunk and discovered various items covered in blood.[49] Upon receiving additional information from the respondent, a body was located on a farm in a nearby county.[50] After a habeas corpus petition was denied by the federal district court, the United States Court of Appeals for the Seventh Circuit reversed, holding that the search of the trunk had been unconstitutional.[51]

On appeal, the Supreme Court began its analysis with the firmly-rooted assumption that "a search of private property without proper consent is 'unreasonable' unless . . . authorized by a valid search warrant."[52] The decision further stated, "[a]lthough vehicles are 'effects' within the meaning of the Fourth Amendment . . . *there is a constitutional difference between houses and cars*."[53] "[The difference] stems both from the ambulatory character of the [car] and from the fact that extensive . . . noncriminal contact with automobiles will bring local officials in 'plain view' of evidence[.]"[54] Justice Brennan stated that "because of . . . the frequency with which a vehicle can become disabled or involved in an accident . . . [police] contact with automobiles will be substantially greater than . . . contact in a home or office."[55] This noted distinction is of considerable importance given that when courts expand the community caretaker doctrine into the domestic realm, they are applying a baseline standard of reasonableness rather than considering the enhanced protection that a home is supposedly afforded.[56] This interchangeability was never intended by the Court.

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46 *Id.*

47 *Id.* at 436-37. Officer Weiss stated that the effort to find the revolver was "standard procedure" in the department. *Id.* at 437.

48 *Id.* at 437.

49 *Id.*

50 *Id.* at 437-38.

51 Dombrowski v. Cady, 471 F.2d 280, 286 (7th Cir. 1972) (holding that the search could not be upheld on the basis of the "plain view" doctrine).

52 *Cady*, 413 U.S. at 439 (citing Camara v. Mun. Court of S.F., 387 U.S. 523, 528-29 (1967)).

53 *Id.* (emphasis added) (citing Chambers v. Maroney, 299 U.S. 42, 52 (1970)).

54 *Id.* at 442.

55 *Id.* at 441.

56 *See, e.g.,* United States v. McGough, 412 F.3d 1232, 1236-37 (11th Cir. 2005); Laney v. State, 117 S.W.3d 854, 861 (Tex. Crim. App. 2003); People v. Ray, 981 P.2d 928, 933 (Cal. 1999); State v. Alexander, 721 A.2d 275, 279 (Md. Ct. Spec. App. 1998).

In determining that the search of the trunk was not unreasonable under the Fourth Amendment, the Court placed emphasis on the fact that the officer was justifiably acting based on concern for the safety of the public:

> Local police officers . . . frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what . . . may be described as *community caretaker functions*, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.[57]

In the Court's opinion, although the officer had not obtained a warrant before searching the vehicle, his intrusion was nevertheless reasonable in order to protect the safety of the public should the gun have been removed from the vehicle.[58] The judgment of the Court of Appeals was reversed.[59]

Unfortunately, *Cady* neither thoroughly discussed the standard of suspicion necessary for police to execute a search when performing caretaker functions, nor did it expressly state the extent to which the home would be protected. Instead, the Court merely implied that the standard necessary to invoke the community caretaker exception was that of reasonableness:[60] "Given the known facts, would a prudent and reasonable officer have perceived a need to act in the proper discharge of his or her community caretaking functions?"[61] Granted, the ultimate standard set forth in the Fourth Amendment is reasonableness.[62] Nevertheless, there remains a general agreement that, unless a carefully-defined exception applies, a search of private property is unreasonable absent a valid search warrant.[63]

Naturally, the question then becomes, is the community caretaker exception carefully defined to the point such that a valid search warrant is unnecessary? As far as the Court is concerned, when it comes to automobile searches, based upon the expectation of privacy associated with them, reasonableness is generally a satisfactory standard.[64] The problem with allowing "reasonableness" to also serve as a general

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57 *Cady*, 413 U.S. at 441 (emphasis added).

58 *Id.* at 447-48.

59 *Id.* at 450.

60 *Id.* at 439.

61 Matthew Bell, *Fourth Amendment Reasonableness: Why Utah Courts Should Embrace the Community Caretaking Exception to the Warrant Requirement*, 10 BERKELEY J. CRIM. L. 3, 3 (2005) (quoting People v. Ray, 981 P.2d 928, 937 (Cal. 1999)).

62 *Cady*, 413 U.S. at 439.

63 Camara v. Mun. Court of S.F., 387 U.S. 523, 528-29 (1967) (stating that a search of private property is generally unreasonable absent a search warrant).

64 *Cady*, 413 U.S. at 439-40 (citing Preston v. United States, 376 U.S. 364, 366-67 (1964)).

standard for warrantless home searches is that almost any time an officer is performing a function devoid of crime-fighting intent, they would have free reign to enter ones' dwelling absent a warrant. Furthermore, what is "reasonable" is a matter of opinion that will differ from one person to the next. This vast, all-encompassing, loosely-defined standard in no way harmonizes with the imbedded ideal that invasion of the home is the "chief evil" against which the Fourth Amendment protection was designed.[65]

B. Exigent Circumstances

Another well-established warrantless search exception exists for emergencies or dangerous situations known as "exigent circumstances."[66] "Where safety is threatened and time is of the essence . . . the need to protect life and to prevent serious bodily injury provides justification for an otherwise invalid entry."[67] An important distinction between the caretaker and exigent circumstance exceptions is that the latter applies when the police are acting in their *crime-fighting roles*.[68] When the government invokes the exigent circumstances exception, the entrenched presumption that warrantless entry of a home is unreasonable must be rebutted.[69] In order to do so, the government must demonstrate a "'grave emergency' that 'makes a warrantless search imperative to the safety of the police and the community.'"[70] In addition, the officer must have acted on probable cause, and in good faith, based on the totality of the circumstances.[71] Any exigencies supporting a warrantless entry must be known by the police prior to entry of the premises.[72]

As the Florida Supreme Court has noted, the situations under which exigent circumstances have been applied are "few in number

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65 Payton v. New York, 445 U.S. 573, 585 (1980).

66 Riggs v. State, 918 So. 2d 274, 278 (Fla. 2005) (recognizing that a warrant is not required when "exigent circumstances" are present).

67 *Id.* (quoting Arango v. State, 411 So. 2d 172, 174 (Fla. 1982)).

68 Laney v. State, 117 S.W.3d 854, 861 (Tex. Crim. App. 2003). *Compare* Welsh v. Wisconsin, 466 U.S. 740, 748-54 (1984) (finding where officers entered the appellant's residence and arrested him after receiving information that he was driving under the influence, no exigent circumstances existed), *with* Mincey v. Arizona, 437 U.S. 385, 392 (1978) (introducing the emergency aid doctrine and holding it to apply when the police are acting to protect or preserve life).

69 *See Welsh*, 466 U.S. at 750.

70 *Riggs*, 918 So. 2d at 278 (citing Illinois v. Rodriguez, 497 U.S. 177, 191 (1990)).

71 Seibert v. State, 923 So. 2d 460, 468 (Fla. 2006) (stating that whether exigent circumstances are present is evaluated based on totality of circumstance); *see* State v. Wakeford, 953 P.2d 1065, 1069 (Mont. 1998) (articulating probable cause and good faith as exigent circumstance requirements).

72 United States v. Warner, 843 F.2d 401, 403 (9th Cir. 1988).

and carefully delineated."[73] Included among the recognized uses of exigent circumstances is the pursuit of a fleeing felon, the prevention of evidence destruction, and searches incident to lawful arrest.[74] Federal courts have characterized exigent circumstances as existing within four general categories: (1) hot pursuit of a fleeing felon; (2) imminent destruction of evidence; (3) the need to prevent a suspect's escape; and (4) a risk of danger to the police or to others.[75] Although the United States Supreme Court has had the opportunity to broaden this exception, it has "steadfastly declined this invitation:"

> Our rejection of such claims is not due to a lack of appreciation of the difficulty and importance of effective law enforcement, but rather to our firm commitment to "the view of those who wrote the Bill of Rights that the privacy of a person's home . . . may not be totally sacrificed in the name of maximum simplicity in enforcement of the criminal law."[76]

From a policy standpoint, the exigent circumstance exception stands as recognition that, as a practical concern, a warrant is not always able to be secured in time for police officers to carry out their *crime-fighting* duties in an emergency.[77] Criminal investigation often demands immediate action. Even though the exigent circumstances exception serves to override the need to obtain a warrant, it remains steadfastly limited in its application and should always satisfy the aforementioned carefully-delineated standards.

C. Emergency Aid Doctrine

Of the three Fourth Amendment exceptions discussed in this comment, the emergency aid doctrine presents the greatest challenge when it comes to proper categorization. Under this exception, police may enter a residence without a warrant when the purpose of the entry is to provide immediate medical aid or assistance.[78] Most impor-

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73 *Riggs*, 918 So. 2d at 279.

74 *Id.* at 278-79 (citing Warden v. Hayden, 387 U.S. 294, 298-99 (1967) (holding that the police acted reasonably upon entering a house to search for a man described as being involved in an armed robbery); Schmerber v. California, 384 U.S. 757, 770-71 (1966) (stating the officer might reasonably have believed he was confronted with an emergency when the delay necessary to obtain a warrant threatened destruction of evidence); Chimel v. California, 395 U.S. 752, 762-63 (1969) (holding there was reasonableness of the officer in searching the arrested person to remove possible weapons).

75 United States v. Rohrig, 98 F.3d 1506, 1515 (6th Cir. 1996).

76 Illinois v. Rodriguez, 497 U.S. 177, 192 (1990) (quoting Mincey v. Arizona, 437 U.S. 385, 393 (1978)).

77 *See* BLOOM, *supra* note 1, at 102.

78 Commonwealth v. Snell, 705 N.E.2d 236, 242 (Mass. 1999).

tantly, the impetus for entry may not be related to gathering evidence of criminal activity.[79] In determining whether a search was justified under the emergency aid exception, most courts have looked to the objective reasonableness of the officer's belief in the existence of a medical emergency.[80] Moreover, a search under this exception will only be upheld to the extent that it was necessary to resolve the emergency situation.[81]

Historically, the exception was first officially discussed in *Mincey v. Arizona*.[82] In this case, during a narcotics raid, an undercover police officer was shot and killed.[83] Shortly thereafter, homicide detectives arrived on the scene and conducted a four-day warrantless search of the petitioner's apartment.[84] After being convicted of murder, the petitioner argued that the evidence from the warrantless search should not have been admitted.[85] In response, the State contended that a categorical exception to the warrant requirement existed since a possible homicide presents an emergency situation demanding immediate action.[86] Although the Court rejected this line of reasoning,[87] it did officially recognize the rendering of emergency aid as a Fourth Amendment exception:

> We do not question the right of the police to respond to emergency situations. Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they *reasonably believe* that a person within *is in need of immediate aid*.[88]

The creation of the emergency aid exception serves as recognition that the preservation of life and the rendering of emergency aid are imperative enough to circumvent the requirement of a warrant.[89] Sim-

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79 *Id.*

80 *See, e.g.*, Brigham City v. Stuart, 547 U.S. 398, 403 (2006); Riggs v. State, 918 So. 2d 274, 278-79 (Fla. 2005); Ortiz v. State, 24 So. 3d 596, 603 (Fla. 5th Dist. Ct. App. 2009).

81 BLOOM, *supra* note 1, at 104.

82 Mincey v. Arizona, 437 U.S. 385 (1978).

83 *Id.* at 387.

84 *Id.* at 389.

85 *Id.*

86 *Id.* at 392. The State also argued that the search of the petitioner's apartment did not invade any constitutionally protected right of privacy since, by shooting an officer, Mincey forfeited any reasonable expectation of privacy in the apartment. *Id.* at 391. This contention was rejection by the Court. *Id.* at 391-92.

87 *Id.* "[A] four-day search that included opening dresser drawers and ripping up carpets can hardly be rationalized in terms of the legitimate concerns that justify an emergency search." *Id*. at 393.

88 *Id.* (emphasis added).

89 Mary Elisabeth Naumann, *The Community Caretaker Doctrine: Yet Another Fourth Amendment Exception*, 26 AM. J. CRIM. L. 325, 331 (1999).

ilar to a scenario involving exigent circumstances, the need for haste serves to justify a decrease in privacy rights: "[s]ince emergency aid presents a greater urgency than other caretaking functions, courts generally permit a greater degree of intrusion upon privacy . . . ."[90] Even so, courts still require that the previously-referenced standards be fulfilled in order for the warrantless search to be upheld.[91]

Because the Supreme Court did not outright recognize an "emergency aid exception," but rather mentioned it in its dicta, subsequent application has been inconsistent.[92] The Florida Supreme Court, unlike the United States Supreme Court, has addressed the issue several times and has upheld warrantless entries motivated by feared medical emergencies.[93] Given that the emergency aid doctrine and the exigent circumstances exception both involve emergencies requiring immediate action, courts have often used them interchangeably.[94] Furthermore, because rendering aid in a medical emergency is a type of caretaking function devoid of criminal purpose, courts have also categorized the emergency aid doctrine as a subcategory of the community caretaker doctrine.[95] However, the exceptions are not interchangeable due to their different purposes.[96] Since the emergency aid doctrine requires that a search be devoid of any criminal investigation,[97] officers performing warrantless searches that are related to criminal activity must justify their actions using exigent circumstances.[98] Although similar, the two doctrines are not identical due to a narrow distinction:[99]

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90 *Bell*, *supra* note 61, at 20.

91 *See supra* notes 78-81 and accompanying text.

92 Riggs v. State, 918 So. 2d 274, 279 (Fla. 2005).

93 *Id.* at 280.

94 Naumann, *supra* note 89, at 332 (citing State v. Jones, 947 P.2d 1030, 1036-37 (Kan. Ct. App. 1997)).

95 *Id.* at 330. It can be argued that the community caretaker doctrine is broad and actually encompasses three smaller Fourth Amendment exceptions: (1) the emergency aid exceptions; (2) the automobile impoundment doctrine; and (3) the public servant exception. *Id.* The common element in all three of these exceptions is that they are totally divorced from criminal activity. *See* People v. Ray, 981 P.2d 928, 933 (Cal. 1999) (holding that the emergency aid doctrine is a subcategory of community caretaker doctrine); Naumann, *supra* note 89, at 330. For the purposes of this comment, the term "community caretaker doctrine" will be used to refer to what some jurisdictions would label as the "public servant" exception. *See* Naumann, *supra* note 89, at 338.

96 *Id.* at 332.

97 "The 'emergency exception' permits police to enter and investigate private premises to preserve life . . . or to render first aid, *provided they do not enter with an accompanying intent to arrest or search*." *Riggs*, 918 So. 2d at 280; *see also* Commonwealth v. Snell, 705 N.E.2d 236, 243 (Mass. 1999).

98 Naumann, *supra* note 89, at 332-33.

99 Laney v. State, 117 S.W.3d 854, 861 (Tex. Crim. App. 2003) (noting difference between emergency doctrine and community caretaker doctrine).

> Under the emergency doctrine, the officer has an *immediate*, reasonable belief that he or she must act to "protect or preserve life or avoid serious injury." On the other hand, under the *Cady* doctrine, the officer "might or might not believe there is a difficulty requiring his general assistance." Therefore, while both doctrines are based on an officer's reasonable belief in the need to act pursuant to his or her "community caretaking functions," the emergency doctrine is limited to the functions of protecting or preserving life or avoiding serious injury.[100]

III. COMMUNITY CARETAKER FUNCTIONS TRIGGER FOURTH AMENDMENT PROTECTION

Courts have often had difficulty determining whether the community caretaking doctrine involves searches that garner judicial attention under the Fourth Amendment.[101] As Judge Torpy expressed in *Ortiz v. State*, the purpose of a search warrant is to ensure that conclusions as to probable cause are drawn.[102] Since probable cause is a concept that is confined to criminal investigations, it could be argued that a warrant would be unnecessary when police are performing functions totally devoid from the detection of crime.[103] This issue, as it relates to the community caretaker analysis, is important in that "[i]f courts do not classify caretaker encounters . . . as searches, [such] encounters [will] not invoke Fourth Amendment considerations that require an evaluation of the actions . . . ."[104]

Courts that believe warrants are inapplicable during community caretaking searches are misguided in two aspects: first, the Fourth Amendment's protections are not limited to police searches,[105] and second, "the Fourth Amendment applies even if the conduct falls short of a 'full-blown search.'"[106] The Supreme Court has held that it would be "anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior."[107] The Fourth Amendment also regulates the conduct of fire marshals, building inspectors, and those whose "purpose may be to locate and abate a suspected public nuisance, or

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100 *Id.*

101 Naumann, *supra* note 89, at 342.

102 Ortiz v. State, 24 So. 3d 596, 604 (Fla. 5th Dist. Ct. App. 2009) (Torpy, J., concurring) (citing South Dakota v. Opperman, 428 U.S. 364, 371 (1976)).

103 *Id.* at 604.

104 Naumann, *supra* note 89, at 342.

105 Camara v. Mun. Court of S.F., 387 U.S. 523, 530 (1967).

106 Naumann, *supra* note 89, at 342 (citing Terry v. Ohio, 392 U.S. 1, 19 (1968)).

107 *Camara*, 387 U.S. at 530.

simply to perform a routine periodic inspection."[108] If the Fourth Amendment applies to searches that are completely unrelated to criminal investigation, it would only stand to reason that it also applies when police officers are performing a search under their role as community caretakers. In addition, a "search occurs when an expectation of privacy that society is prepared to consider reasonable is infringed."[109] Considering a person enjoys the highest expectation of privacy in their home, it would be reasonable to say that a search occurs when police enter a home, even if only to perform community caretaking functions.[110]

IV. EXPANSION AND RESTRICTION OF THE COMMUNITY CARETAKER EXCEPTION IN OTHER JURISDICTIONS

Outside of Florida, federal and state courts have varied on whether to enlarge the caretaker doctrine. In jurisdictions where rulings have extended *Cady* so as to encompass domestic searches, courts have erred in two aspects. First, they have often justified their holdings by either mistakenly using exigent circumstance or emergency aid rationale labeled under the heading of a community caretaking function, or in other instances, have failed to apply an already-existing exception whose carefully-delineated standards offer greater Fourth Amendment protection.[111] Second, they have disregarded the express language in *Cady* that distinguished the privacy interests between automobiles and homes.[112]

One example of confusion among doctrines can be found in *People v. Ray*.[113] In that matter, the Supreme Court of California upheld a warrantless search of the defendant's home based on the officer having entered to perform what the court categorized as "community caretaking functions."[114] Reacting to information that the defendant's apartment door had been open all day and that the inside was in

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108 *Ortiz*, 24 So. 3d at 620 (Cohen, J., dissenting) (citing Michigan v. Tyler 436 U.S. 499, 504 (1978)).

109 United States v. Jacobsen, 466 U.S. 109, 112 (1984); *see also* Twilegar v. State, 42 So. 3d 177 (Fla. 2010).

110 Kyllo v. United States, 533 U.S. 27, 31 (2001) (recognizing the right to be free from an unreasonable search is at core of Fourth Amendment).

111 *See, e.g.,* United States v. Rohrig, 98 F.3d 1506, 1518 (6th Cir. 1995) (discussing "exigent circumstances"); United States v. Nord, 586 F.2d 1288, 1290-91 (8th Cir. 1978) (noting the individual was in need of medical assistance); Laney v. Texas, 117 S.W.3d 854, 861 (Tex. Crim. App. 2003) (classifying the emergency aid exception as part of community caretaker doctrine); Troy v. Ohlinger, 475 N.W.2d 54, 56-57 (Mich. 1991) (stating the defendant was in need of medical attention).

112 Cady v. Dombrowski, 413 U.S. 433, 441 (1973).

113 People v. Ray, 981 P.2d 928 (Cal. 1999).

114 *Id.* at 931.

shambles, officers went to Ray's home.[115] Upon arrival, there was concern for the welfare of the people inside.[116] Although they found no one inside the apartment, the officers did observe a large quantity of what was suspected to be cocaine.[117] In response to the defendant's motion to suppress, the prosecution attempted to justify the search based on the exigent circumstances exception.[118] When the admissibility of the evidence ultimately came before the California Supreme Court, the State urged the court to affirm based on the emergency aid exception, "characterized as a variant of exigent circumstances."[119]

Applying the emergency aid exception requirements – that there must be "specific [articulate] facts indicating the need for swift action to prevent imminent danger to life" – the court held that such standards had not been met.[120] However, rather than test the applicability of the exigent circumstance exception, or conclude their inquiry altogether, the court submitted that the community caretaker doctrine existed for situations such as the present: "Under the community caretaker exception, circumstances short of a perceived emergency may justify a warrantless entry . . . 'where the police reasonably believe that the premises have recently been *or are being burglarized*.'"[121] To enter a home on the belief that it has been, or is being *burglarized*, is precisely a police function related to a criminal activity. If there actually had been an objective belief, based on the totality of the circumstances, that a crime was being committed inside the home, the search could have been justified under the exigent circumstances exception.[122] When first recognizing a community caretaker exception, the United States Supreme Court plainly stated that it was meant to be "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."[123] If the officers had in fact needed to immediately enter the dwelling in order to either stop a crime or render medical aid, an already-existing exception could have provided them lawful entrance. Conversely, if there truly was no im-

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115 *Id* at 932.

116 *Id.* at 931.

117 *Id.* at 932.

118 *Id.* at 931. Both the trial court and the Court of Appeals analyzed the facts and the law under the exigent circumstances exception. *Id.*

119 *Id.* at 932-33.

120 *Id.* at 934.

121 *Id.* (emphasis added) (quoting 3 LAFAVE, SEARCH & SEIZURE § 6.6(a), at 390 (3d ed. 1996)).

122 Laney v. State, 117 S.W.3d 854, 861 (Tex. Crim. App. 2003) (stating that the exigent circumstances exception applies when police are acting in their crime-fighting roles).

123 Cady v. Dombrowski, 413 U.S. 433, 441 (1973).

mediate threat, then the officers should have been required to obtain a warrant.

Supporting this contention was the concurring opinion of Chief Justice George, who appropriately concluded that the search was lawful based instead on an application of the exigent circumstances exception.[124] Citing to case precedent, the Chief Justice noted that exigent circumstances include situations requiring swift action to prevent danger and preserve life.[125] In the present case, based upon the police dispatch, the condition of the home, and the officer's own experience, there was reasonable belief that exigent circumstances were present.[126]

Finally, in his dissent, Judge Mosk recognized that the majority was creating a broad new exception, and, in doing so, obscured the line at the entrance to the home that the Fourth Amendment had constructed:

> Under the . . . newly created exception, entry is permissible, and incriminating evidence can be seized, when police officers enter a home merely to 'find out what is going on' . . . . Does the lead opinion's new exception also permit entry when a door is merely unlocked? When a neighbor reports that no one is home, or the occupants simply choose not to answer a knock at the door?[127]

Given that the test for the community caretaker exception is "untethered," the potential for abuse is great.[128] Allowing officers to conduct warrantless home searches, absent an immediate threat to the occupants, would be to create an exception that would swallow the general rule of security and privacy.[129] Ultimately, Judge Mosk did not share in the majority's belief that law enforcement assistance will "go downhill" without recognition of a new exception.[130]

The confusion over when to apply exigent circumstances can also be seen in *State v. Alexander*.[131] In *Alexander*, officers entered a home under the mistaken belief that a breaking and entering was in progress, and discovered marijuana.[132] Like its California counterpart in *Ray*, the Maryland Court of Special Appeals mistakenly found that "what the officers did . . . was the quintessence of the reasonable per-

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124 *Ray*, 981 P.2d at 940 (George, J., concurring).

125 *Id.*

126 *Id.* at 938. One officer testified that "from his experience he believed there was a '95 percent' likelihood the premises had been burglarized." *Id.* at 931.

127 *Id.* at 944 (Mosk, J., dissenting).

128 *Id.*

129 *See id.*

130 *Id.*

131 *See* State v. Alexander, 721 A.2d 275 (Md. Ct. Spec. App. 1998).

132 *Id.* at 287.

formance of their community caretaking function."[133] In light of the above facts, it is clear that the community caretaker exception was inappropriately applied in this case for two reasons. First, investigating what is believed to be an ongoing breaking and entering is not devoid from the prevention or detection of crime. It is exactly what the exigent circumstances exception was created to address.[134] Second, although rendering assistance to people in need is a function that a police officer undertakes to care for the community, it is not the type of function that *the* community caretaker doctrine originally encompassed.[135]

The community caretaker doctrine has not only been expanded based on what truly equates to be exigent circumstances; rather, there has also been considerable misapplication when it comes to the rendering of emergency aid. In *Troy v. Ohlinger*, an officer was dispatched to the home of the defendant based on what was reported as an "injury accident."[136] A bystander told the officer that he heard a crash and saw a car being driven away by a man who appeared to be injured.[137] The vehicle was found parked outside of the defendant's home, appearing as though it had recently been involved in an accident.[138] After knocking on the door and receiving no response, the officer shined his flashlight inside a window and witnessed the defendant lying motionless and bleeding.[139] After the officer entered the home and awoke the defendant, the defendant was charged with "operating a motor vehicle while under the influence . . . and leaving the scene of a personal injury."[140]

In ruling that the officer was justified to enter the home without a warrant, the court declared that "the inability to determine, without entry, whether [the defendant] was injured, justified further police investigation as part of *the community caretaker function*."[141] What is troubling is that the court specifically cites to *Mincey*, the first Su-

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133 *Id.* The court stated that, "[h]ad the officers walked away from the scene, they would have been derelict in their duty." *Id.* at 287.

134 Laney v. State, 117 S.W.3d 854, 861 (Tex. Crim. App. 2003) (noting that the exigent circumstances exception applies when police are acting in their crime-fighting roles).

135 Cady v. Dombrowski, 413 U.S. 433, 441 (1973) ("Local 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.").

136 Troy v. Ohlinger, 475 N.W.2d 54, 55 (Mich. 1991).

137 *Id.* at 55.

138 *Id.*

139 *Id.*

140 *Id.* at 56.

141 *Id.* at 57 (emphasis added).

preme Court case to explicitly acknowledge an emergency aid exception, as validating the warrantless entry.[142] If the court recognized that the officer entered the dwelling under the belief that the defendant was in need of immediate aid, why not simply state that the emergency aid exception applied? Granted, the rendering of emergency aid can arguably be viewed as a community caretaker function in that it is divorced from criminal purpose.[143] Nevertheless, if the home is given the greatest Fourth Amendment protection, the court would have been better served to apply a more appropriate exception – the emergency aid doctrine. Examining the objective reasonableness of the officer's belief in a medical emergency, it is clear that the requirements of the emergency aid exception were satisfied: the car parked outside the home appeared as though it had been in a recent accident, and the defendant was bleeding and unconscious.[144] All evidence pointed to an objective belief that the defendant was in need of immediate aid.[145] The inherent danger in this type of misdiagnosis of exceptions is the unnecessary encroachment upon Fourth Amendment rights. Both the emergency aid and exigent circumstance exceptions are well-established in nature and require a specific set of circumstances.[146] As a result, they are less open to extension and are not untethered in nature.

In jurisdictions where the community caretaker doctrine has not been extended, "courts have turned to language in *Cady* emphasizing the constitutional difference between the expectation of privacy in cars and homes."[147] In *United States v. Erikson*, the Ninth Circuit Court of Appeals made the determination that *Cady* did not extend to the home.[148] In that case, the government argued that when an officer looked inside the defendant's home, the search was protected under the community caretaker doctrine since there was a belief that a bur-

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142 *Id.* at 56. *Mincey v. Arizona* was the first Supreme Court case to officially recognize a Fourth Amendment exception based on the immediate need to render emergency aid: "We do not question the right of the police to respond to emergency situations. Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they *reasonably believe* that a person within *is in need of immediate aid*." 437 U.S. 385, 392 (1978) (emphasis added).

143 Cady v. Dombrowski, 413 U.S. 433, 441 (1973) (listing community caretaking functions are those totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute).

144 *Troy*, 475 N.W.2d at 55. In determining whether a search is justified under the emergency aid exception, most courts have looked to the objective reasonableness of the officer's belief in the existence of a medical emergency. *See* Riggs v. State, 918 So. 2d 274, 282 (Fla. 2005).

145 *See id.*

146 Naumann, *supra* note 89, at 358.

147 *Id.* at 348.

148 United States v. Erickson, 991 F.2d 529, 533 (9th Cir. 1993).

glary might have occurred.[149] In reaching its determination that the community caretaker exception was not applicable, the court analyzed the language in *Cady*: "Although it involved a community caretaking function, Cady *clearly* turned on the 'constitutional difference' between searching a house and searching an automobile. In upholding the search of *Cady*'s automobile, the Court expressly relied on its 'previous recognition of the distinction between motor vehicles and dwelling places.'"[150] The court did recognize that in order for police officers to perform their crime fighting functions, privacy interests must sometimes be balanced.[151] Nevertheless, "the exigent circumstances exception . . . adequately accommodates these competing interests."[152]

Similar reliance on the express language in *Cady* can be found in *U.S. v. Pichany*.[153] In *Pichany*, the Seventh Circuit Court of Appeals held that the search of the defendant's unlocked warehouse by officers who were not investigating an ongoing crime could not be justified under the community caretaker exception.[154] "Accepting the government's argument would require us to ignore express language in the *Cady* decision confining the 'community caretaker' exception to searches involving automobiles."[155]

One of the best cases in terms of articulating the different Fourth Amendment exceptions, while limiting *Cady*, is the Michigan case of *People v. Davis*.[156] In *Davis*, police officers received a radio dispatch saying that shots had been fired at a motel.[157] After entering the defendant's motel room based upon the belief that the defendant was in danger, the officers seized a gun as well as narcotics.[158] The court of appeals upheld the search based on the community caretaker exception.[159]

In reversing the decision of the lower court, the Michigan Supreme Court began by examining the emergency aid exception.[160] The decision methodically showed how other courts had used "*articulate standards*[,] specifically applicable to emergency aid entries[,]" to

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149 *Id.* at 530-31.
150 *Id.* at 532.
151 *Id.* at 531.
152 *Id.* at 533.
153 United States v. Pichany, 687 F.2d 204 (7th Cir. 1982).
154 *Id.* at 207-09.
155 *Id.* at 208.
156 People v. Davis, 497 N.W.2d 910 (Mich. 1993).
157 *Id.* at 911.
158 *Id.* at 911-12.
159 People v. Davis, 473 N.W.2d 748, 753 (Mich. Ct. App. 1991).
160 *Davis*, 497 N.W.2d at 914-15.

judge whether the search was lawful.[161] A common feature was that police officers had to possess a reasonable belief that such circumstances existed.[162] On the other hand, *Cady* did not list the standard of suspicion necessary to search protected areas under the community caretaker exception: "[t]he [*Cady*] Court's opinion suggested that because the police were not looking for any evidence of a crime, they needed no suspicion . . . to 'search.'"[163] Since the emergency aid exception contains the carefully-delineated standard of reasonable suspicion, "when the police are investigating a situation in which they reasonably believe someone is in need of immediate aid, their actions should be governed by the emergency aid doctrine, regardless of whether these actions can also be classified as community caretaking activities."[164] The reason for this conclusion is that the levels of privacy intrusion between an automobile and a home are dissimilar.[165] It is because the home receives considerable protection that courts have seen fit to articulate standards specifically applicable to emergency aid entries.[166] Given that these pronounced standards serve to protect the fabric of the Fourth Amendment, courts should not seek to apply a less germane exception whose lack of standard and clear boundaries create an exception that could arguably erode the Fourth Amendment.

Most importantly, the overarching theme in the cases refusing to extend the community caretaker doctrine is the recognition that the Supreme Court carefully considered the differences in constitutional privacy expectations between an automobile and a home.[167] In doing so, the Court had the opportunity to extend the doctrine beyond vehicles, yet decided otherwise. Moreover, there is the acknowledgment that when the community caretaker doctrine is applied, instead of a more applicable, already-existing exception, searches are more prone to abuse in that caretaking can simply become a pretext for criminal investigations.[168]

Although the Eleventh Circuit has yet to expressly rule on the boundaries of the community caretaker exception, Florida courts can infer from the ruling in *U.S. v. McGough* that the federal court disfa-

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161 *Id.* at 921 (emphasis added).

162 *Id.* at 918.

163 *Id.* at 919.

164 *Id.* at 921.

165 *Id.* at 920-21.

166 *See id.* at 921.

167 Cady v. Dombrowski, 413 U.S. 433, 442 (1973) (acknowledging the constitutional difference between searches of homes from vehicles based on ambulatory character of the latter).

168 Naumann, *supra* note 89, at 358-59.

vors expansion.[169] In *McGough*, the defendant locked his five-year-old daughter, Queenice, in his apartment while he ran an errand.[170] After the daughter mistakenly called 911, the police arrived on the scene.[171] Upon the defendant's return, he was arrested for reckless conduct and placed in a police car.[172] While waiting for her aunt to arrive, Queenice was asked by an officer if she would enter the apartment to gather some shoes and clothing.[173] After Queenice stated that she was "too scared to go in by herself," an officer picked her up and accompanied her into the apartment.[174] While inside, the officer saw what appeared to be drugs and a revolver.[175] "Queenice pointed to the gun and said 'that's the gun my father uses to kill people.'"[176] At trial, McGough argued that the search had been illegal and filed a motion to suppress.[177] The government contended that the search was valid since the officer initially entered the apartment to perform a community caretaking function.[178]

Addressing the argument, the court noted that it has "never explicitly held that the community caretaking functions of a police officer [permitted] the warrantless entry into a private home."[179] In assuming for the sake of the appeal that there was such an exception, the court still found that the facts in this case did not justify its application.[180] When the apartment was searched, McGough was in custody and Queenice was safe; there was no immediate threat. "Were we to apply the community caretaking exception in this case, we would undermine the Amendment's most fundamental premise: *searches inside the home, without a warrant, are presumptively unreasonable*."[181]

V. THE COMMUNITY CARETAKER DOCTRINE IN FLORIDA

Florida cases directly addressing the community caretaker doctrine are limited. Until recently, Florida courts acknowledged the existence of the exception, yet none were willing to apply it to the

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169 United States v. McGough, 412 F.3d 1232, 1238 (11th Cir. 2005) (recognizing that community caretaker doctrine undermines the basic premise of Fourth Amendment).

170 *Id.* at 1233.

171 *Id*. The daughter, Queenice, was actually attempting to call her aunt. *Id.*

172 *Id.* at 1234.

173 *Id.*

174 *Id.*

175 *Id.*

176 *Id.*

177 *Id.* at 1235.

178 *Id.* at 1236.

179 *Id.* at 1238.

180 *Id.* at 1239.

181 *Id.*

home.[182] However, in upholding a warrantless entry initiated to reunite a child with his parents in *Ortiz v. State*, the Fifth District Court of Appeal has in effect extended the community caretaker exception.[183] In addition, *Ortiz* leaves the impression that confusion over the borders of the community caretaker doctrine, as well as its relation to previously-mentioned exceptions, still exists.[184] However, before discussing *Ortiz*, it is important to first outline the history of the community caretaker doctrine within the State.

A. Historical Evolution

In Florida, *Cobb v. State* was the first case to recognize the community caretaker doctrine.[185] In upholding the warrantless search of a vehicle, the court turned to the language of *Cady*: "Officer Thomas' actions plainly constituted a part of what the Supreme Court characterized . . . as the community caretaking functions."[186] "[T]he officer opened the [car] door, not in order to search . . . but rather [to secure] the vehicle against theft, vandals, and the elements . . . ."[187] Nowhere in *Cobb* was it stated or implied that *Cady* searches could be applied to the home. Although Florida courts eventually broadened the exception to encompass boats, this is arguably of no consequence since boats and cars are both ambulatory and come into frequent contact with the public.[188]

The closest Florida has come to considering the adoption of a warrantless residential search, premised on the community caretaker doctrine, was in *Riggs v. State*.[189] In *Riggs*, sheriff's deputies were summoned to an apartment complex after a four-year-old girl had been spotted wandering naked and alone.[190] Motivated by concern over the parents' welfare, as well as the possibility of child abandonment, the deputies searched the complex door to door.[191] The deputies noticed that every door on the second floor was closed, except for one.[192] Despite knocking loudly and identifying themselves as police,

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182 *See* discussion *infra* Part V.A.

183 24 So. 3d 596 (Fla. 5th Dist. Ct. App. 2009).

184 *See generally id.* (en banc) (attempting to "flesh out" the borders of medical emergency exception and community caretaking function), *appeal denied*, 37 So. 3d 848 (Fla. 2010).

185 Cobb. v. State, 378 So. 2d 82 (Fla. 3d Dist. Ct. App. 1979).

186 *Id.* at 84.

187 *Id.* at 83.

188 Castella v. State, 959 So. 2d 1285, 1292 (Fla. 4th Dist. Ct. App. 2007) (acknowledging caretaker exception usually applies to automobiles).

189 Riggs v. State, 918 So. 2d 274 (Fla. 2005).

190 *Id.* at 276.

191 *Id.*

192 *Id.*

no one inside the apartment came to the door.[193] "Concerned that something had happened to the child's caregiver and that maybe there was a medical concern . . . the deputies entered the apartment."[194] After entering the apartment, the deputies discovered marijuana along with the petitioner, Riggs.[195]

At trial, Riggs moved to suppress the evidence, stating it was the fruit of an unreasonable search.[196] The State argued that the search was justified under exigent circumstances, yet the court was not persuaded by reason of the fact that the child was already safe.[197] The Second District Court of Appeal reversed and held that the search was lawful under the reasonable belief that the child's caregiver was experiencing an emergency.[198]

Upon review, the Florida Supreme Court acknowledged that certain courts had cited *Cady*[199] as supporting a medical emergency exception.[200] Even so, the court was not persuaded to adopt such an approach, and instead upheld the warrantless search based on the equivalent of the emergency aid exception: "We *do not rely on Cady* . . . because the Court's analysis was *expressly limited to the automobile context*."[201] With this statement, the court unequivocally chose not to expand the community caretaker doctrine beyond the context set forth in *Cady*.

B. Ortiz v. State

Of late, the Fifth District Court of Appeal has unofficially revitalized the community caretaker debate by issuing an opinion that attempted to "[flesh] out the border[] of both the 'feared medical emergency' exception . . . and the now well-recognized community caretak-

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193 *Id.* at 276-77.

194 *Id.* at 277.

195 *Id.*

196 *Id.*

197 *Id.* at 278.

198 *See* State v. Riggs, 890 So. 2d 465, 467 (Fla. 2d Dist. Ct. App. 2004), *rev'd,* 918 So. 2d 274 (Fla. 2005).

199 *Riggs,* 918 So. 2d at 280 n.1 (citing Cady v. Dombrowski, 413 U.S. 433, 441 (1973)).

200 *Id.* Although the court uses the term "medical emergency exception" to reference a disputed point in *Cady v. Dombrowski*, *see supra* note 156, Florida courts generally refer to the emergency aid doctrine recognized in *Mincey v. Arizona* as the "emergency exception." *See, e.g.*, *Riggs*, 918 So. 2d at 280 (recognizing "emergency exception" permits police to enter private premises to preserve life or render aid); Twilegar v. State, 42 So. 3d 177, 192 (Fla. 2010) (noting the Fourth Amendment exception for emergency situation requiring rendering of aid); State v. Moses, 480 So. 2d 146, 148 (Fla. 2d Dist. Ct. App. 1985) (stating that under "emergency exception," police do not need a warrant if a life is in danger).

201 *Riggs*, 918 So. 2d at 280 n.1 (citing Cady v. Dombrowski, 413 U.S. 433, 442 (1973)) (emphasis added).

ing function of police officers."[202] In *Ortiz*, a deputy received a call from an elementary school after a six-year-old's parents failed to pick him up and could not be reached by telephone.[203] Following standard policy procedure, the deputy drove the child to the child's home in an effort to take reasonable steps to contact the parents before involving the Department of Children and Families.[204] The child told the deputy that his parents "were or should be home."[205] In spite of this, no one appeared to be home, there were no cars in the driveway, and there were no signs of forced entry.[206] The child received no response when he knocked on the front door. However, the garage door was unlocked, and the child opened it, possibly with help from the deputy.[207]

Once inside the garage, the deputy could see a light on in the house and entered after being invited in by the child.[208] Upon entering, he announced his presence but received no response.[209] Finding no one inside, the child took the deputy to the parent's bedroom where the door was locked from the inside.[210] After knocking, announcing his presence, and still receiving no answer, the deputy became concerned for the well-being of the parents.[211] Upon unlocking the door and entering the bedroom, the deputy began to look for a body, but instead found cocaine in the bathroom.[212] Ortiz then entered the room and after admitting that the cocaine was his, was arrested on drug-related charges.[213] At trial, Ortiz moved to suppress the evidence, contending that exigent circumstances did not justify entry into the locked bedroom.[214]

In the original panel's decision, the majority maintained that unlike *Riggs*, the State had failed to demonstrate a reasonable belief that the child's parents were inside the house and in need of medical attention.[215] When the deputy arrived at the home, there were no cars in the driveway and no evidence of foul play.[216] Concern for the well-being

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202 Ortiz v. State, 24 So. 3d 596, 597 (Fla. 5th Dist. Ct. App. 2009).

203 *Id.* at 598.

204 *Id.*

205 *Id.*

206 *Id.*

207 *Id.*. The deputy testified that he believed the child opened the door on his own. However, the officer conceded that he may have helped the child open the door. *Id.* at 598 n.1.

208 *Id.* at 598.

209 *Id.*

210 *Id.*

211 *Id.*

212 *Id.*

213 *Id.* at 598-99.

214 *Id.*

215 Ortiz v. State, No. 5D08-1653, slip op. at 7-8 (Fla. 5th Dist. Ct. App. Apr. 24, 2009), *withdrawn en banc*, 24 So. 3d 596 (Fla. 5th Dist. Ct. App. 2009).

216 *Id.* at 8.

of the parents only materialized *after* the deputy entered the home and found the locked bedroom.[217] "'[G]ood intentions notwithstanding, the deputy lacked a reasonable basis to believe that a grave emergency existed . . . .'"[218] As there was no exigency demonstrating a justified warrantless entry,[219] the majority sought to reverse Ortiz's conviction.[220]

It was within the original dissent, authored by Judge Monaco, that the community caretaker doctrine was first incorporated into the case: "In my perspective Florida has already joined the growing number of courts that recognize that community caretaker function of police officers, or its functional equivalent, the exigent circumstances doctrine . . . ."[221] Judge Monaco acknowledged that *Riggs* had limited *Cady* to automobiles, yet he nevertheless found the majority's view of the police officer's actions to be overly restrictive.[222] In his opinion, not only was this case analogous to *Riggs* where the court had allowed a warrantless entry to contend with a feared emergency, but also, the Fourth Amendment was not intended to prevent "humanitarian activity" as evidenced by the existence of exigent and emergency exceptions.[223] Ultimately, Ortiz's conviction was affirmed when the case was heard *en banc*.[224]

The decision to hear the case *en banc* was founded on the belief that the original decision had a potential negative effect on the actions of law enforcement officials.[225] Judge Monaco, whose original dissent became the majority opinion, once again, cited to *Cady* for its recognition that police officers perform caretaking functions.[226] In addition, an attempt was made to classify the emergency aid exception as a progeny of the community caretaker exception.[227] However, both of

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217 *Id.*

218 *Id.* at 10.

219 Exigency is synonymous with emergency. Therefore, when a court sometimes refers to "exigent circumstances," they are not remarking on an ongoing criminal emergency associated with the exigent circumstance exception discussed throughout this paper. *See, e.g.*, Michigan v Tyler, 436 U.S. 499, 509 (1978) (describing a fire as an exigent circumstance).

220 *Ortiz*, slip op. at 15-16.

221 *Id.* at 4 (Monaco, J., dissenting).

222 *Id.*

223 *Id.* at 2-4. Although those Fourth Amendment exceptions exist to preclude humanitarian deeds, unlike the community caretaker exception, they are widely accepted, and their standards are carefully delineated. *See* discussion *supra* Parts II.B-C.

224 Ortiz v. State, 24 So. 3d 596, 603 (Fla. 5th Dist. Ct. App. 2009).

225 *Id*. at 597. "A rehearing en banc may be granted pursuant to Florida Rule of Appellate Procedure 9.331(a) when the case is of exceptional importance or in order to maintain uniformity in the court's decisions." *Id*.

226 *Id.* at 600.

227 *Id.* "[C]ourts have traced the derivation of the emergency doctrine . . . to the recognized community caretaking function of law enforcement officers." *Id.*

the cases referred to as supporting this statement merely cited to *Mincey* as the genesis of this contention.[228] As previously noted, *Mincey* simply recognized that a search during an ongoing emergency did not require a warrant.[229] There was never any mention made of an emergency aid exception derived from the principles expressed in *Cady*.[230]

In determining that the emergency exception used in *Riggs* applied in this instance, the *Ortiz* majority sought to answer one question: "[w]hether the officer had reasonable grounds to believe that the child's parents might be in need of medical attention."[231] The answer to this inquiry was debatable and ultimately split the court. In the opinion of the majority, the officer could have reasonably concluded that something was wrong given that (1) the child indicated that his parents were inside; (2) once inside the garage, the officer noticed a light on in the house as though someone was home; (3) upon reaching the master bedroom, the officer noticed the door was locked from the inside, and (4) the parents were currently an hour and a half late in picking their child up from school.[232]

In contrast, the dissenting opinion authored by Judge Orfinger underscores the principle that when the government seeks to invoke a Fourth Amendment exception, it has the burden of rebutting the presumption of unreasonableness.[233] It was his belief that the government failed to demonstrate a grave emergency that would make a warrantless search imperative to the safety of the police and of the community.[234] Prior to the entry of the home, there was no evidence of foul play, no car was present in the driveway, and the house appeared to be empty.[235] In short, there was no objective evidence pointing to an emergency inside the Ortiz residence.

When analyzing *Ortiz*, the first question that should be asked is, considering the evidence, was the officer's search of the home constitutional under an emergency aid exception analysis? The reason that an inquiry into the legality of the search should begin with the emergency aid doctrine is that it was the exception applied in *Riggs*.[236] If

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228 *See* United States v. Russell, 436 F.3d 1086, 1090 (9th Cir. 2006) (recognizing the emergency aid doctrine as deriving from the holding in *Mincey v. Arizona*); *see also* United States v. Bradley, 321 F.3d 1212, 1214 (9th Cir. 2003) (referencing *Mincey v. Arizona* as the first case to recognize the emergency aid doctrine).

229 *See* Mincey v. Arizona, 437 U.S. 385, 392-93 (1978).

230 *Id.*

231 *Ortiz*, 24 So. 3d at 602.

232 *Id.* at 602-03.

233 *Id.* at 610 (Orfinger, J., dissenting).

234 *Id.* at 611, 613 (citing McDonald v. United States, 335 U.S. 451, 456 (1948)).

235 *Id.* at 613.

236 Riggs v. State, 918 So. 2d 274 (Fla. 2005).

the majority construes *Ortiz* and *Riggs* to be sufficiently similar, then it should follow that both satisfy the emergency aid exception.[237]

In reviewing whether it appeared as though an ongoing emergency existed inside the home, the facts must be assessed objectively.[238] "As a general rule, the reasonableness of an officer's conduct [depends] upon the existence of facts available to him *at the moment of the search* . . . ."[239] When the officer began to open the garage door, he had seen no lights on within the house and had not yet discovered the locked bedroom door.[240] The only evidence of a potential ongoing emergency within the house was a six-year-old's belief that his parents were inside.[241] Conversely, the officers in *Riggs* were confronted with a situation that was considerably more attuned to the purpose of the emergency aid doctrine. Before initiating a search, the officers had found a child wandering naked and alone, a lighted apartment whose door was open as though someone had come out, and had received no response from their knocks.[242] Truly, the situation indicated that the welfare of the child's parents might be in question. Unlike in *Riggs*, in *Ortiz*, the objective circumstances existing *at the time of the search* simply did not provide a basis to believe that there could have been an ongoing emergency.[243] In *Riggs*, because the deputies were "[c]oncerned that 'something had happened to the child's caregiver and that maybe there was a medical concern in there,' they entered the apartment."[244] In *Ortiz*, the officer testified that he went into the home, not because of a perceived emergency, but because he sought to reunite the child with his parents.[245] Hence, these two cases are dissimilar.

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237 *Ortiz*, 24 So. 3d at 600-01 (citing Riggs v. State, 918 So. 2d 274 (Fla. 2005)).

238 *See, e.g.*, Rolling v. State, 695 So. 2d 278, 293-94 (Fla. 1997). "[I]n determining whether [an] officer acted reasonably, due weight must be given not to his unparticularized suspicions or 'hunches,' but to the reasonable inferences which he is entitled to draw . . . ." People v. Ray, 981 P.2d 928, 937 (Cal. 1999) (quoting People v. Block, 499 P.2d 961, 963 (Cal. 1971)).

239 *Ray*, 981 P.2d at 942 (Mosk, J., dissenting) (emphasis added) (quoting People v. Duncan, 720 P.2d 2, 5 (Cal. 1986)).

240 *Ortiz*, 24 So. 3d at 598. Given that a garage attached to a residence receives Fourth Amendment protection, the search began when the officer entered the garage. State v. Duhart, 810 So. 2d 972, 975 (Fla. 4th Dist. Ct. App. 2002) (Klein, J., dissenting) (recognizing that a person's garage is as much a part of his castle as the rest of the home) (quoting United States v. Oaxaca, 233 F.3d 1154, 1157 (9th Cir. 2000)).

241 *See Ortiz*, 24 So. 3d at 598.

242 *Riggs*, 918 So. 2d at 282.

243 In Florida cases, the term "emergency" refers to the need for officers to preserve life or render emergency aid. *See, e.g.*, *Riggs*, 918 So. 2d at 280 (recognizing "emergency exception" permits police to enter private premises to preserve life or render aid).

244 *Id.* at 277.

245 *Ortiz*, 24 So. 3d at 613 (Orfinger, J., dissenting).

The next question becomes, if the emergency aid exception was not applicable, could the search have been justified based on nothing more than the reasonableness of the officer's desire to provide the community caretaking service of reunification? Although the majority never expressly stated that the search should be upheld based on an exception aside from rendering emergency aid, this contention is implicit within the opinion: "The officer was fulfilling a laudable police function in attempting to reunite the child with his missing parents . . . We give weight to the fact that a proper function of the officer . . . was to attempt to reunite the child with his parents . . . ."[246] This statement, coupled with the officer's testimony that he sought to bring about reunification, suggests that the initial phase of the search was based solely on the officer's community caretaker role.[247] Given that Florida has never allowed the community caretaker doctrine to allow for a warrantless search of a home, the search is not justifiable under this exception either.[248] In reaching this conclusion, it is important to recall the reasons certain jurisdictions improperly extend *Cady* into the home.

Improper extension of the community caretaker doctrine occurs for two reasons: (1) failure to apply already-recognized, more suitable exceptions and (2) disregard for the language in *Cady* that expressly limited the exception to automobiles.[249] The majority in *Ortiz* makes both of these errors. Turning to the first mistake, instead of strictly analyzing the search under the emergency aid exception, the court construes the doctrine to be a part of the community caretaker exception, essentially advocating that the search was lawful both because there was an ongoing emergency *and* because of the community caretaking function of reunification.[250]

By emphasizing the police officer's attempt to reunify the child with his parents, it appears as though the majority intuitively recognized that the objective reasonableness of rendering aid was not enough, by itself, to overcome the warrant requirement.[251] In order to not hinder officers from performing their caretaking functions, the majority reaches an interesting conclusion placed in context by the following quote: "The issue always is a comparison of the harm done by a marginal curtailment of one value with the benefit to another

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246 *Id.* at 602 (majority opinion).

247 *See id.* at 617 (Evander, J., dissenting).

248 *See id.* (interpreting *Riggs* as implicitly rejecting the community caretaker exception as it applies to residences); *see also Riggs*, 918 So. 2d at 280.

249 *See* discussion *supra* Part IV.

250 *Ortiz*, 24 So. 3d at 600, 603.

251 *Id.* at 602.

value from the curtailment."[252] According to the court, "the benefit obtained by allowing officers to act without a warrant in perceived emergency situations must trump the marginal curtailment of the warrant requirement."[253] In spite of this belief, allowing warrantless entry into the home to perform caretaking functions is anything but a marginal curtailment. In effect, it is the creation of a broad and unrestricted exception.

The emergency aid doctrine has already been recognized in Florida and has clear-cut standards that exist to protect unnecessary encroachment upon Fourth Amendment rights.[254] If the court truly wished to adhere to the decision in *Riggs* by applying a recognized exception to the warrant requirement, it would have examined the objective belief of an ongoing emergency at the time the officer entered the garage. In upholding a search where the entry was not predicated on the desire to render emergency aid or medical assistance, the court endorsed the warrantless search of a home based on what was a perceived community caretaking function. As previously mentioned, the danger with upholding a search anchored in caretaking principles is that the low standard of reasonability, absent delineated standards, erodes the constitutional line that protects the home from invasions of privacy.

In justifying a community caretaker search, the only question that must be asked is, "[g]iven the known facts, would a prudent and reasonable officer have perceived a need to act in the proper discharge of his or her community caretaking functions?"[255] Such a low standard virtually guarantees access to the home whenever an officer perceives that entry would be in an individual's best interest. This broad exception unseats the settled ideal that the right of a man to retreat into his own home stands at the very core of the Fourth Amendment.[256]

Without question, the majority's holding would be strengthened if the community caretaker exception were to apply to the home. In Judge Evander's words, "If the community caretaker exception was found to be applicable to residences, then the State's interest in seeking prompt reunification . . . should be given significant weight . . . However, if the . . . exception is inapplicable, then . . . the State's argument must fail."[257]

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252 *Id.* at 603 (quoting R. POSNER, HOW JUDGES THINK 330 (2008)).
253 *Id.*
254 Riggs v. State, 918 So. 2d 274, 280-81 (Fla. 2005).
255 Bell, *supra* note 61, at 3 (citing People v. Ray, 981 P.2d 928, 937 (Cal. 1999)).
256 LANDYNSKI, *supra* note 19, at 43.
257 *Ortiz*, 24 So. 3d at 617 (Evander, J., dissenting).

According to Judge Torpy, author of one of the concurring opinions, "*Cady* does not compel, and there is no logical basis for, a distinction between vehicles and residences for purposes of assessing whether police acted reasonably in conducting a noncriminal search under their caretaking function."[258] Essentially, there were two issues in *Cady*: whether the search was unreasonable solely because the officer lacked a warrant,[259] and whether the search was otherwise unreasonable under the Fourth and Fourteenth Amendments.[260] In Judge Torpy's view, the distinction drawn between automobiles and homes was implemented simply to answer the first issue of unreasonableness absent a warrant.[261] The second issue of reasonableness in light of the Fourth Amendment did not require a distinction between homes and automobiles since the court stated that "[t]he Framers . . . have given us only the general standard of 'unreasonableness' as a guide in determining whether searches . . . meet the standard of that Amendment . . . *where a warrant is not required*."[262]

The problem with this reasoning is that the second issue (unreasonableness within the meaning of the Fourth Amendment) is dependent upon the first (unreasonableness absent a warrant). In *Cady*, the general standard of "reasonableness" was implemented by the Court in view of the fact that a search of the trunk *did not require a warrant*.[263] The only reason the search of the car did not require a warrant was that, unlike homes, cars are ambulatory in nature, and police officers often come into frequent noncriminal contact with them.[264] The distinction between cars and dwellings led to the search being lawful absent a warrant, which in turn led to the Court implementing a standard of overall reasonableness to answer the second inquiry.[265] Ultimately, the Florida Supreme Court interpreted *Cady* as expressly limiting the community caretaker exception to vehicles.[266] As a result, the majority in *Ortiz* erred in giving weight to the officer's attempt to reunite the child with his parents.

But what about the need to balance our inclinations to have police officers perform caretaking functions against our need to be protected from warrantless searches? As the majority underscored, "[we live] in a day and age where society expects police officers to be deep-

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258 *Id*. at 607 (Torpy, J., concurring).
259 Cady v. Dombrowski, 413 U.S. 433, 442 (1973).
260 *Id.* at 442.
261 *Ortiz*, 24 So. 3d at 606.
262 *Cady*, 413 U.S. at 448 (emphasis added).
263 *Id.* at 447-48.
264 *Id.* at 441-42.
265 *See id.* at 447-48.
266 Riggs v. State, 918 So. 2d 274, 280 n.1 (Fla. 2005).

ly involved in humanitarian and life . . . [and are expected to engage in] protecti[ve] actions that go beyond traditional law enforcement duties."[267] Even if the ideals expressed in *Cady* were not extended to the home, there would not be a "far-reaching negative effect" on law enforcement officials.

Officers are still able to perform warrantless domestic searches when there is a *true* indication of an ongoing medical emergency or even ongoing criminal behavior as provided for by the exigent circumstances exception. If the search in *Ortiz* could not be clearly justified by either of these existing exceptions, then perhaps the situation was not that of an ongoing emergency in which there was no time to secure a warrant. Even though the officer acted on what were clearly good-faith intentions, he always had the option of leaving the child with the Department of Children and Families until the house could be properly searched.

Although the court had good intentions in affirming the decision by trying not to discourage police officers from undertaking humanitarian actions, it very well may have created a new Fourth Amendment exception that allows for warrantless entry into the home whenever police reasonably believe that they are performing a community caretaking function.[268] Such an exception is overly broad, open to abuse, and significantly infringes on the protection that homes are afforded under the Fourth Amendment. In fact, Fourth Amendment rights would have been better served if the court analyzed the search under a strict application of the emergency aid doctrine, based on the objective belief that there was an ongoing emergency at the time the garage door was opened. The emergency aid exception is well-recognized and does not present a threat to the firm line drawn between the home and the government.

Although an analysis of this type would not favor the majority's view as much as one giving extra credence to an officer's community caretaking functions, it nonetheless would have been more consistent with the Florida Supreme Court's prior stance on the community caretaker exception.[269] As the case was decided, *Ortiz* indirectly goes against Florida precedent by allowing a warrantless search that was, at least in part, motivated and undertaken by actions that fall under the heading of a community caretaking function.

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267 Ortiz v. State, 24 So. 3d 596, 597 (Fla. 5th Dist. Ct. App. 2009).

268 *Id.* at 597. "[T]he view of the original panel decision had potentially far-reaching negative effects on the actions of law-enforcement officers . . . ." *Id.*

269 *Riggs,* 918 So. 2d at 280 n.1.

VI. PROTECTING THE FOURTH AMENDMENT: FLORIDA SHOULD LIMIT THE COMMUNITY CARETAKER DOCTRINE TO AUTOMOBILES

Protection of privacy against unwarranted intrusion remains the key function of the Fourth Amendment and should always be considered by Florida courts.[270] Because there were no delineated standards of reasonableness or probable cause set forth in *Cady*, it stands to reason that when police are not investigating criminal activity, their search is justified *whenever* they believe there is a danger that threatens the well-being of the community.[271] This opens the door to creating a sizeable warrant exception that could consume the general rule. When the Court first recognized caretaker functions, it also acknowledged that there was a difference in privacy, based on contact with the general public, between a vehicle and a home.[272] It is difficult to accept that the Court would have intentionally set such a low threshold for a new exception when it had previously stated that "physical entry *of the home* is the chief evil against which the wording of the Fourth Amendment is directed."[273]

Granted, there are exceptions to the Fourth Amendment recognizing that certain searches promote a legitimate governmental interest.[274] However, these searches have carefully-delineated standards; both the exigent circumstances doctrine and the emergency aid doctrine require probable cause and good faith based on objective reasonableness.[275] Furthermore, they both apply in situations that are expressly limited in scope and thus pose no danger to become infinitely broad.[276] As *Ortiz v. State* illustrates, judges will not always agree as to whether the standards for objective reasonableness within a certain exception have been satisfied. Nevertheless, the basic requirements for doctrines such as the emergency aid doctrine remain identifiable and have been agreed upon by most courts.[277] Such a claim is not available to the community caretaker doctrine.[278]

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270 *See* Schmerber v. California, 384 U.S. 757, 767 (1966).

271 *See generally* Cady v. Dombrowski, 413 U.S. 433 (1973).

272 *Cady*, 413 U.S. at 441-42.

273 Payton v. New York, 445 U.S. 573, 585 (1980) (quoting United States v. U.S. District Court (*Keith*), 407 U.S. 297, 313 (1972)).

274 *See* People v. Bennett, 949 P.2d 947, 955-56 (Cal. 1998).

275 *See* Mincey v. Arizona, 437 U.S. 385, 392 (1978); Seibert v. State, 923 So. 2d 460, 468 (Fla. 2006) (stating "[w]hether sufficient exigent circumstances exist is evaluated based on the totality of the circumstances"); *see* State v. Wakeford, 953 P.2d 1065, 1069 (Mont. 1998) (articulating probable cause and good faith as exigent circumstance requirements).

276 *See* discussion *supra* Parts II.B-C.

277 *See* discussion *supra* Part II.C.

278 *See* Cady v. Dombrowski, 413 U.S. 433 (1973).

Absent a more definitive interpretation of the community caretaker doctrine from the United States Supreme Court, Florida courts should do their utmost to construe the exception in accordance with the Supreme Court's construction.[279] Although reasonable minds may differ as to what *Cady* specifically stood for,[280] the Florida Supreme Court has explicitly stated that the caretaker analysis in *Cady* is limited to the automobile context.[281] In keeping with the privacy interests of the Fourth Amendment, as well as the plain language of *Cady* and *Riggs*, Florida should continue to unite with other state and federal jurisdictions in resisting the temptation to expand the community caretaker doctrine.[282] Already-existing Fourth Amendment exceptions serve the need to place human life above household privacy and recognize that there is not always an opportunity to obtain a warrant during an ongoing emergency.[283] If Florida allows yet another Fourth Amendment exception to exist, especially one as broad as the community caretaker doctrine, the State risks completely destroying a fundamental right whose sanctity has been recognized since well before the American Revolution.[284] Such sacrifice of given rights is not justified in the name of "maximum simplicity."[285]

Unfortunately, when petitioned to hear *Ortiz*, the Florida Supreme Court declined jurisdiction.[286] While this decision would imply that the court found no conflict between the holdings in *Riggs* and *Ortiz*, a valuable opportunity to ultimately correct the position that

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279 *See* FLA. CONST. art. I, § 12 (requiring Florida courts to decide search issues in accordance with the United States Supreme Court's interpretation of the Fourth Amendment).

280 *See* Ortiz v. State, 24 So. 3d 596, 606-07 (Fla. 5th Dist. Ct. App. 2009) (Torpy, J., concurring), for the contention that *Cady v. Dombrowski* does not compel a distinction between vehicles and residences.

281 Riggs v. State, 918 So. 2d 274, 280 n.1 (Fla. 2005) (citing Cady v. Dombrowski, 413 U.S. 433, 441-42 (1973)).

282 *See, e.g.*, United States v. McGough, 412 F.3d 1232, 1238 (11th Cir. 2005) (stating that the court has never explicitly held community caretaking functions as applying to private homes); United States v. Erickson, 991 F.2d 529 (9th Cir. 1993) (refusing to extend the community caretaker function to warrantless search of residence); United States v. Pichany, 687 F.2d 204 (7th Cir. 1982) (declining to extend the community caretaker function to warrantless search of warehouse); United States v. Bute, 43 F.3d 531 (10th Cir. 1994) (repudiating the argument that community caretaking functions allow for warrantless searches of private homes); N.D. v. Gill, 755 N.W.2d 454 (N.D. 2008) (limiting the community caretaker exception to automobiles); Wood v. Virginia., 497 S.E.2d 484, 487 (Va. Ct. App. 1998) (refusing to extend the community caretaker exception to warrantless searches of a home).

283 *See* discussion *supra* Parts II.B-C.

284 "[O]verriding respect for the sanctity of the home . . . has been embedded in our traditions since the origins of the Republic." Payton v. New York, 445 U.S. 573, 601 (1980).

285 Illinois v. Rodriguez, 497 U.S. 177, 192 (1990) (quoting Mincey v. Arizona, 437 U.S. 385, 393 (1978)).

286 Ortiz v. State, 37 So. 3d 848 (Fla. 2010) (unpublished).

the community caretaker exception was squandered.[287] Even if there was no conflict between the two cases, the Florida Supreme Court has jurisdiction to review cases of great public importance.[288] Although the court did address non-criminal Fourth Amendment exceptions in *Riggs*, its focus on the subject was brief, and the issue remains unresolved as evidenced by *Ortiz*.

The court should have granted the motion for rehearing to state that, regardless of whether the officer in *Ortiz* had an objective reason to believe that an ongoing medical emergency was taking place, there would be no further expansion of the community caretaker exception. In other words, *Riggs* would remain the standard, regardless of the arguably dissimilar outcome in *Ortiz*. As the law currently stands, *Ortiz* leaves the door open for further Fourth Amendment erosion because it implies that community caretaker functions authorize warrantless entry.

As mentioned throughout this comment, much of the unnecessary extension from the community caretaker doctrine stems from confusion over which Fourth Amendment exception should be applied in any given situation.[289] It is easy to hold the point of view that categorizing numerous exceptions under various headings is merely a matter of semantics. After all, they stand for the same basic ideal that police should be able to enter a dwelling when they reasonably believe that an emergency exists.[290] Nevertheless, when the standards for each recognized exception are met, the presumption that the search in question was unreasonable is rebutted.[291] Conversely, when a new standard is created, such as a version of the community caretaking doctrine that extends to the home, there is no evidence that the presumption of unreasonableness is rebutted, especially since "for the purposes of the Fourth Amendment there is a constitutional difference between houses and cars."[292] Only by carefully delineating the various Fourth Amendment exceptions, and then holding that *Cady* is limited to automobiles, will the issue be properly settled.

Although it may be tempting to widen *Cady* by labeling other exceptions under the broad heading of "community caretaking" duties,

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287 The Florida Supreme Court has jurisdiction to "review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance, or that is certified by it to be in direct conflict with a decision of another district court of appeal." FLA. CONST. art. I, § 3(b)(4).

288 *Id.*

289 *See* discussion *supra* Part IV.

290 *Id.*

291 *See* Riggs v. State, 918 So. 2d 274, 278 (Fla. 2005).

292 Cady v. Dombrowski, 413 U.S. 433, 439 (1973) (quoting Chambers v. Maroney, 399 U.S. 42, 52 (1970)).

this blurs the line unnecessarily. While it may be an important governmental and societal interest not to discourage police officers from performing those duties labeled as community caretaking functions,[293] there are already Fourth Amendment exceptions that serve this very purpose.[294] No matter whether officers' intentions are just or their actions are unrelated to crime-fighting, not every warrantless search should be considered lawful. Florida courts must remember that physical entry of the home is the chief evil against which the Fourth Amendment is directed, and should retain the policy that the community caretaker doctrine does not extend beyond the scope of vehicles.[295]

VII. CONCLUSION

By continuing to carve out Fourth Amendment exceptions and expand already-existing ones, courts do nothing more than erode the basic principles on which the Fourth Amendment was premised. No matter how well-intentioned police officers may be, our society should not sacrifice fundamental rights in the name of simplicity. As Justice Douglas once opined, the Fourth Amendment is for the innocent and guilty alike.[296] If losing evidence is the price society pays for the freedom guaranteed by the Fourth Amendment, let us hope that the courts continue to view the Fourth Amendment as being worth that price. To protect "[t]he right of the people to be secure in their . . . houses . . . against unreasonable searches and seizures,"[297] Florida courts should interpret the community caretaker exception as it was intended – limited to automobile searches.

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293 Because officers who enter dwellings to perform caretaking functions are acting in good faith, the argument could be made that a new exception to the exclusionary rule may be on the horizon. The exclusionary rule is a judicially created remedy designed to protect Fourth Amendment rights. United States v. Calandra, 414 U.S. 338, 348 (1974). It operates by allowing courts to render evidence inadmissible if obtained during a search that violated Fourth Amendment immunities. *See* Elkins v. United States, 364 U.S. 206, 223 (1960). The purpose of the rule is to deter and prevent police misconduct. Michigan v. DeFillippo, 443 U.S. 31, 38 n.3 (1979). One of the recognized exceptions to the exclusionary rule is that of good faith. United States v. Leon, 468 U.S. 897, 911-12 (1984). In *Leon*, the Court created the good faith exception by recognizing that at a certain point the detrimental consequences of an illegal police action become so attenuated that "the deterrent effect of the exclusionary rule no longer justifies its cost." *Id.* at 911 (quoting Brown v. Illinois, 422 U.S. 590, 603-04 (1975)). Although this comment does not advocate for nor denounce an expansion to the good faith exception, the case could be made that because an officer's intentions are easy to recognize under the community caretaker exception, as well as the existence of a legitimate societal interest in having caretaker functions performed, a considerable number of problems could be obviated if the exclusionary rule were further loosened.

294 *See* discussion *supra* Parts II.B-C.

295 *See* Payton v. New York, 445 U.S. 573, 586 (1980).

296 Draper v. United States, 358 U.S. 307, 314 (1959) (Douglas, J., dissenting).

297 *Cady*, 413 U.S. at 439 (citing U.S. CONST. amend. IV).