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## **Home Searches and the Community Caretaking Doctrine**

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### **Introduction**

In a recent case, [Ray v. Township of Warren](#), #09-4353, 2010 U.S. App. Lexis 24043 (3rd Cir.), in which officers concerned for the possible safety of a minor girl made a warrantless entry into a home to check on her, they subsequently attempted to defend themselves against a federal civil rights lawsuit seeking damages for a Fourth Amendment violation by pointing to the “community caretaking doctrine,” despite that doctrine’s origin in the context of vehicle searches.

This article takes a brief look at the issues raised by this case, examining first the U.S. Supreme Court’s establishment of the doctrine, followed by an examination of the facts and holdings in *Ray*, as well as surveying the differing stands taken by the various federal courts of appeal as to the application of the doctrine to home searches. At the end of the article, there is a listing of relevant resources and references.

## Relevant U.S. Supreme Court case

The U.S. Supreme Court set forth the community caretaking doctrine for searches in the case of [\*Cady v. Dombrowski\*](#), #72-586, 413 U.S. 433 (1973), in the context of a vehicle search. In that case, a police officer from Chicago visiting Wisconsin informed police there that he had been involved in a car accident.

Local officers picked him up and took him back to the accident scene. He appeared intoxicated to them, had plainly been drinking, and told them conflicting stories about what had occurred. He also told them that he was an officer, leading them to believe that he was required to carry a weapon at all times.

Finding no weapon on him, one of the officers decided to check the front seat and glove compartment of his damaged car, but found nothing there either.

The officers were motivated to find a possible weapon by a desire “to protect the public from the possibility that a revolver would fall into untrained or perhaps malicious hands.”

Officers then had the car towed to a private garage where it was parked outside. They got the Chicago officer to the hospital for medical treatment, after which one of them returned to the car to resume a search for the Chicago officer’s service revolver, acting according to standard procedure “to protect the public from a weapon’s possibly falling into improper hands.”

Opening the car trunk, the officer discovered a number of items that linked the Chicago officer to a murder.

The U.S. Supreme Court ruled that this search of the car was legal as it was the result of an officer’s “community caretaking” function, “totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.”

The Court’s reasoning appeared to place much emphasis on a constitutional distinction between vehicles and homes. Since vehicles and traffic are heavily regulated, and cars can frequently become disabled or involved in accidents on public streets, there will inevitably be greater contact between motorists and officers concerning the vehicles than there will be contact between officers and residents in homes and businesses.

While some police involvement with motorists and their vehicles occurs in the context of enforcing criminal statutes, the Court reasoned that much contact occurs when officers are acting as community caretakers, and is unrelated to criminal investigation.

The Court was very direct in contrasting vehicle searches from home searches, stating that a search of a car may be reasonable “although the result might be the opposite in a search of a home,” given the sanctity of the home. In an earlier case, the Court emphasized that “[t]he physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.” [\*United States v. United States District Court\*](#), #70-143. 407 U.S. 297, 313 (1972).

In performing this community caretaking function, officers are “expected to aid those in distress, combat actual hazards, prevent potential hazards from materializing and provide an infinite variety of services to preserve and protect public safety.” [\*United States v. Smith\*](#), 522 F.3d 305 (3d Cir.2008) quoting [\*United States v. Rodriguez-Morales\*](#), 929 F.2d 780 (1st Cir.1991).

### **Latest Application to Home Searches**

Despite the vehicle search origin of the community caretaking doctrine, some officers have sought to apply similar principles to certain home entries and searches. An example of this is [\*Ray v. Township of Warren\*](#), #09-4353, 2010 U.S. App. Lexis 24043 (3rd Cir.).

In this case, officers concerned about the well-being of the young daughter of a man estranged from his wife made a warrantless entry into a home to check on her. The wife had gone to the home to pick up the daughter for court ordered visitation, received no response to the doorbell, and contacted the police after seeing a man inside she thought was her husband.

Police were concerned because of past domestic disputes involving the couple, and consulted a judge, who told them they could enter. The officers did not seek an arrest or search warrant, although the judge mistakenly thought they wanted one to arrest the father for violation of a court order concerning visitation.

The man and his daughter were not in the home, and he later sued the officers for their warrantless entry.

The federal appeals court rejected the argument that the officers' warrantless entry was justified by their "community caretaking" function, ruling that this doctrine is best viewed as applying in the context of vehicle searches, rather than home searches, since there is a lesser expectation of privacy when it comes to vehicles.

In reaching this conclusion, the court stated that it was ruling in concert with the majority of federal appeals courts that have weighed in on this issue, which are discussed in the next section of this article:

“We agree with the conclusion of the Seventh, Ninth, and Tenth Circuits on this issue, and interpret the Supreme Court's decision in *Cady* as being expressly based on the distinction between automobiles and homes for Fourth Amendment purposes. The community caretaking doctrine cannot be used to justify warrantless searches of a home. Whether that exception can ever apply outside the context of an automobile search, we need not now decide. It is enough to say that, in the context of a search of a home, it does not override the warrant requirement of the Fourth Amendment or the carefully crafted and well-recognized exceptions to that requirement.”

Exceptions that may instead apply include exigent circumstances, which can involve circumstances beyond those confronted by police in a criminal investigatory context. They may also involve hot pursuit of a suspected felon, or the possibility that evidence may be removed or destroyed.

Indeed, the court commented, the protection of a child's welfare, even absent suspicions of criminal activity, may also present an exigency permitting warrantless entry into a home, but only if the officer reasonably believes that “someone is in imminent danger.”

The court concluded that “under the circumstances of this case, it is debatable whether the officers confronted exigent circumstances,” as there was no clear indication of imminent danger.

The court also ultimately ruled, however, that the officers were entitled to qualified immunity, since the law on the subject was not clearly established in the 3rd Circuit at the time of the search.

## Split in the Federal Circuit Courts

The other federal courts disagree about whether the community caretaking doctrine can apply to warrantless searches of a home in appropriate circumstances.

A majority of federal circuits, in agreement with the court in Ray, reject this argument, limiting community caretaking to searches of autos.

Federal circuits taking this position include:

**The Ninth Circuit**, which, in United States v. Erickson, 991 F.2d 529 (9th Cir.1993), reasoned that Cady was based on the distinction between vehicles and residences, stating and that an officer acting as a community caretaker may only enter a building based on an already acknowledged exception to the warrant requirement, like exigent circumstances.

**The Seventh Circuit**, which adopted the same approach in United States v. Pichany, 687 F.2d 204 (7th Cir.1982). This case involved a warrantless search of a privately owned warehouse. The court limited the community caretaking doctrine to automobile searches and refused to create a “warehouse exception,” even if the officers were acting as community caretakers.

The court stated that: “[T]he plain import from the language of the Cady decision is that the Supreme Court did not intend to create a broad exception to the Fourth Amendment warrant requirement to apply whenever the police are acting in an ‘investigative,’ rather than a ‘criminal’ function.”

**The Tenth Circuit** also ruled that the community caretaking doctrine applies only to automobiles. United States v. Bute, 43 F.3d 531 (10th Cir.1994). In that case, the court found that the search of an old manufacturing plant under the auspices of the community caretaking doctrine was unconstitutional because the holding in Cady was based on the “constitutional difference” between searches of automobiles and searches of homes or businesses.

A minority of circuits, however, has relied on the community caretaking exception created in Cady to uphold warrantless entries into houses.

**The Eighth Circuit** in [\*United States v. Quezada\*](#), 448 F.3d 1005 (8th Cir.2006), held that an officer acting in a community caretaking role may enter a residence when the officer has a reasonable belief that an emergency exists that requires attention. In this case, a deputy found the door to an apartment open, and saw a pair of legs on the floor with a shotgun protruding from beneath them.

**The Sixth Circuit** agreed in [\*United States v. Rohrig\*](#), 98 F.3d 1506 (6th Cir.1996), when it held that two officers' warrantless entry into a home was permissible since they were acting as community caretakers to abate a significant noise nuisance.

In rejecting this approach, however, the court in [\*Ray\*](#) reasoned that the cases taking this latter approach:

“do not simply rely on the community caretaking doctrine established in [\*Cady\*](#). They instead apply what appears to be a modified exigent circumstances test, with perhaps a lower threshold for exigency if the officer is acting in a community caretaking role. “

It noted that the Sixth Circuit itself subsequently questioned whether its decision in [\*Rohrig\*](#) created a new community caretaking exception to the warrant requirement for entry into a home. [\*United States v. Williams\*](#), 354 F.3d 497, 508 (6th Cir.2003) “[D]espite references to the doctrine of *Rohrig*, we doubt that community caretaking will generally justify warrantless entries into private homes.”

## **Conclusion**

Despite the fact that the officers in [\*Ray\*](#) were granted qualified immunity from liability, [\*Ray\*](#) itself now reflects clearly established law in the Third Circuit rejecting the application of the community caretaking doctrine to warrantless home searches. The majority of other federal appeals circuits are in accord.

Officers who seek to enter homes in circumstances similar to the [\*Ray\*](#) case, and who also wish to avoid civil liability, are best advised to either **obtain a warrant** or to seek to determine if a warrantless entry can be justified by some recognized exception to the requirement of a warrant for home searches, such as exigent circumstances, based on a reasonable belief that someone is in imminent danger, rather than just a generalized purpose to perform community caretaking functions.

## Resources

The following are some useful resources related to the subject of this article.

- AELE [Alert on Community Caretaking](#). (2002).
- “[Community Caretaking Searches and the restructuring of ‘exigent circumstances.’](#)” (Alameda County California District Attorney).
- [Search and Seizure: Home/Business](#). (cases reported in AELE publications.)
- [The Police Officer As a Community Caretaker](#). Forensic Evidence.com.

## References:

- John M. (Jack) Collins, “[Community Caretaking Doctrine](#),” Police Chief (Dec.2010).
- Kurt N. Schwartz, “[Police Powers During Public Emergencies. Police Authority to Act Without a Warrant or Court Order Under the Community Caretaker Doctrine.](#)” (Dec.9, 2003).
- Note, “[The Community Caretaker Doctrine: Yet Another Fourth Amendment Exception](#),” 26 Am. J. Crim. L. 325 (1999). (excerpt).
- Debra Livingston, “[Police, Community Caretaking, and the Fourth Amendment](#),” 1998 U. Chi. Legal F. 261 (1998).
- Jack E. Call, “[Defining the community caretaking function](#)”, Policing: An International Journal of Police Strategies & Management, Vol. 21 Iss: 2, pp.269 – 279 (1998). (abstract)

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