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Exigency and Emergency, Understanding the Warrantless Non-Consensual Home Entry

Jacob Chen
Addressing the Flaws of the Existing Exigent Circumstance and Emergency Situation Exceptions to a Warrantless Entry | Jacob Y. Chen
I. INTRODUCTION

The Fourth Amendment of the United States protects the right of the people to be secure in their houses against unreasonable searches and seizures. To ensure that the Fourth Amendment is respected by law enforcement, evidence that is seized during an unlawful search could be suppressed and denied admittance into evidence. In many circumstances, law enforcement officials are required to get a warrant before entering into a person’s house when conducting a search or carrying out an arrest. But there are certain circumstances when it is unnecessary for the police to get a warrant. A general umbrella term for the exception to the warrant requirement is the presence of “exigent circumstances”. In New York State, the determination of exigent circumstances vel non necessarily turns upon whether there is an urgent need that justifies a warrantless entry.1 The Federal Courts have found “urgent need” in a variety of situations including protecting evidence2, putting out an ongoing fire3, assisting persons who are seriously injured or threatened with such injury.4 Another, not necessarily independent, exception to the warrant requirement is the existence of an “emergency situation”. A warrantless search that is

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1 People v McBride, 928 N.E.2d 1027, 1031 (N.Y. 2010).
triggered in response to an emergency situation may not conflict with Fourth Amendment protections. Under New York law, an “emergency situation” relates to the general obligation of police officers to “assist persons whom they reasonably believe to be in distress.” Emergency situations generally fall under the category of police actions pursuant to the “community caretaking doctrine” which involves activity “totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.” This paper explores the appropriateness of the inclusion of “emergency situations” in the general “exigent circumstance” exception and also suggests the possibility of an alternative community caretaking doctrine.

II. BACKGROUND / CONTEXT

The text of the Fourth Amendment states that: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall 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.” In respect to the language, the Supreme Court has emphasized “over and again” that “the mandate of the Fourth Amendment requires adherence to judicial processes.” The inclusion of a “deliberate, impartial judgment of a judicial officer” is a requirement and absence of judicial approval is “persuasive authority” that the search or seizure was unlawful. Although there are certain exceptions to the warrant requirement, like exigent circumstances, they should be understood in context as “exceptions”. Unless carefully delineated, exceptions have the potential to eclipse or swallow the rule. That is why searches conducted outside the judicial process are presumptively unreasonable subject to a few “specifically established” and “well-delineated exceptions”. The existing jurisprudence on exceptions to the warrant requirement, regarding the

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6 Id at 609.
8 U.S. Const. amend. XIV.
11 People v. Weaver, 909 N.E.2d 1195, 1201 (N.Y. 2009).
definition of exigent circumstances, should be interpreted in this context. This is the “conventional interpretation” of Fourth Amendment jurisprudence.\textsuperscript{13}

In respect to purpose, the Supreme Court “generally identifies the protection of privacy as the fourth amendment’s paramount purpose”.\textsuperscript{14} Traditional Fourth Amendment analysis examines (1) how much and what type of privacy society requires and (2) what type of intrusion upon privacy is required to preserve an ordered society.\textsuperscript{15} For a court to find a violation of the Fourth Amendment, the search must invade an expectation of privacy that “society is willing to recognize” as reasonable.\textsuperscript{16} This paper specifically narrows its coverage to instances of warrantless entry into the house or residence. When a person is in his/her home, he/she has a high expectation of privacy that relates to the “sanctity of the home”.\textsuperscript{17} There is a longstanding societal willingness to recognize that high expectation of privacy\textsuperscript{18} that suggests that our right to privacy is at its peak when inside the home.\textsuperscript{19} Because of the right to privacy is at its peak, so are the constitutional safeguards of that right under the Fourth Amendment. Therefore exceptions insofar as warrantless entry into the home is considered, ought to be narrow and circumscribed, both because of the importance of the judicial processes and also because of the sanctity of the home.

\textsuperscript{13} But see e.g. Thomas E. Baker, “The Right of People to Be Secure ... “: Toward a Metatheory of the Fourth Amendment, 30 Wm and Mary L. Rev. 881, 885 (1989) (However there are other understandings of the relationship in the Fourth Amendment between “reasonable” and the warrant clause that conflict with the “traditional” understanding.).
\textsuperscript{14} Strossen, supra note 12, at 1267.
\textsuperscript{15} Baker, supra note 13 at 888.
\textsuperscript{16} Amy L. Peikoff, Pragmatism and Privacy, 5 NYU J.L. & Liberty 638, 639 (2010).
\textsuperscript{18} See Silverman v. United States, 365 U.S. 505, 511 (1961) (“At the very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion”).
\textsuperscript{19} See e.g. Nathan Vaughan, Overgeneralization of the Hot Pursuit Doctrine Provides Another Blow to the Fourth Amendment in Middletown v. Flinchum, 37 Akron L. Rev. 509, 509-510 (2004).
III. UNDERSTANDING THE EXIGENT CIRCUMSTANCES EXCEPTION TO WARRANTLESS HOME ENTRIES

Ordinarily the factors to consider in determining if there are exigent circumstances for a police entry are (1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) whether the suspect ‘is reasonably believed to be armed’; (3) ‘a clear showing of probable cause to believe that the suspect committed the crime’; (4) ‘strong reason to believe that the suspect is in the premises being entered’; (5) ‘a likelihood that the suspect will escape if not swiftly apprehended’; and (6) the peaceful circumstances of the entry. The existence of several, even if not all, of the factors is enough to establish the exigent circumstances of a warrantless police entry. The federal courts have referred to this as the “Dorman factors”. In New York they have been referred to as the “Cruz criteria”. These factors are meant to “assist a suppression court in its analysis of whether exigent circumstances are present” but these factors are neither “definitive” nor “exhaustive” and a suppression court is permitted to consider other facts that suggest an “urgent need that justifies a warrantless entry.” A finding of several of these factors, and sometimes even just one, has justified a finding of exigent circumstances in both New York and Federal cases.

20 McBride, 928 N.E.2d at 1031.
22 See e.g. United States v. MacDonald, 916 F.2d 766 (2d Cir. 1990); Dorman v. United States, 435 F.2d 385, 391 (D.C. Cir. 1970).
24 McBride, 928 N.E.2d at 1031.
25 See e.g. Cloud, 571 N.Y.S.2d at 445 (“when each criterion is placed alongside the uncontested facts herein, the first five are overwhelmingly established and the sixth is not fatally impinged.”); see also People v. Williams, 581 N.Y.S.2d 21, 23 (N.Y. App. Div. 1992) (The finding of five of the six factors and the lack of evidence rebutting the suspect’s likelihood of escape was sufficient to establish exigent circumstances); see also Arriaga, 765 N.Y.S.2d 314 (Court found exigent circumstances based on the seriousness of the crime, statement that defendant was wielding a gun, evidence identifying defendant as suspect, and officer observations to support defendant being on the premises)
26 See e.g. MacDonald, 916 F.2d at 770 (“Sometimes the presence of a solitary factor suffices”); United States v. Gallo-Roman, 816 F.2d 76, 79-80 (2d Cir. 1987) (destruction of evidence); United States v. Callabrass, 607 F.2d 559, 563-64 (2d Cir. 1979) (destruction of evidence and danger to public).
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Evaluation of exigent circumstances do not always require a *Dorman/Cruz* analysis. There are other factors which New York Courts have considered dispositive of exigent circumstances. Such circumstances include the likelihood that the suspect would escape, threat of danger to the police officers on the scene, immediate need for assistance for the protection of life or property, threatened destruction of incriminating evidence, and hot pursuit of a suspect. When these circumstances manifest, courts have found exigent circumstances without referencing or even alluding to the *Dorman/Cruz* factors.

The Federal Courts have likewise found “urgent need” in a variety of situations including protecting evidence, putting out an ongoing fire, hot pursuit of a fleeing felon, and assisting persons who are seriously injured or threatened with such injury. In some cases, both New York Courts and Federal Courts have found exigency using a combination of the *Dorman/Cruz* factors and other “relevant” factors. For instance a finding of several but not all of the *Dorman/Cruz* factors including a failure to find “a likelihood that the suspect will escape if not swiftly apprehended” could still lead to a finding of exigent circumstances when buttressed by non-*Dorman/Cruz* factors like a dangerous and volatile situation, danger to other occupants and initiating arrest in a public place.

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27 *See e.g.* People v. Garrido, 824 N.Y.S.2d 295 (N.Y. App. Div. 2006) (“when it became clear the defendant had seen the officers, exigent circumstances existed for warrantless entry.”); People v. Hallman, 667 N.Y.S.2d 23, 26 (N.Y. App. Div. 1997) (Specifically the court found exigency because the police officers “reasonably believed” that “defendant would have used violence against responding police or others” and articulated the importance of “significant possibility of a violent response by a forewarned and alert suspect” as grounds for exigency.); People v. Kelly, 689 N.Y.S.2d 470 (N.Y. App. Div. 1999) (The First Department found that “the danger that drugs might be disposed of by an occupant of the apartment” was an exigent circumstance that justified a warrantless entry.).

28 *See e.g.* People v. Burr, 514 N.E.2d 1363 (N.Y. 1987).

29 *See e.g.* People v. Funches, 679 N.E.2d 635 (N.Y. 1997).

30 *See e.g.* People v. Parker, 750 N.Y.S.2d 405, 406 (N.Y. App. Div. 2002) (However, in this case the court applied the emergency situation test as opposed to the *Dorman/Cruz* exigent circumstance test).


37 *See e.g.* *MacDonald*, 916 F.2d at 770 (“Not only was each of the Dorman factors fulfilled in the instant case, but several other factors are relevant.”); *McBride*, 928 N.E.2d at 1031.

38 *See e.g.* People v. McBride, 872 N.Y.S.2d 109, 110 (N.Y. App. Div. 2009) (“the behavior and demeanor of the woman that suggested a dangerous and volatile situation”), *aff’d* 928 N.E.2d 1027 (N.Y. 2010).

39 *See e.g.* People v. Mason, 669 N.Y.S.2d 712, 715 (N.Y. App. Div. 1998) (Although Court did not find fifth factor, it found that “added to the foregoing circumstances” there was a “reasonable inference that his presence inside posed a danger to any occupants.”).
A. Flaws in the Use of Dorman/Cruz Factors in Exigent Circumstance Analysis

The use of Dorman/Cruz factors for determining exigent circumstances invokes two issues. The first is inadequacy. The inadequacy of the Dorman/Cruz factors comes from many recurring and obvious situations where there is an “urgent need” for immediate police action but the need is unrelated to the Dorman/Cruz factors. Clear examples include the destruction of evidence or to protect the arresting officer from harm. Unfortunately the Dorman/Cruz factors explicitly did not address these situations because the court in Dorman considered exigent circumstances to be a separate doctrine. However since Dorman/Cruz, many courts both New York and Federal have come to view e.g. destruction of evidence, as a subset of exigent circumstances. The failure of higher courts to address the evolution of exigent circumstance jurisprudence have stymied the development of

40 See e.g. People v. Glia, 651 N.Y.S.2d 967, 970 (N.Y. App. Div. 1996) (Trial Court found only three of the Dorman factors, not including likelihood of escape, and therefore suppressed the search. Appellate court reversed finding that there were exigent circumstances because the arrest was initiated in a public place.)
41 See e.g. People v. Dominquez, 529 N.Y.S.2d 889, 890 (N.Y. App. Div. 1988) (Second Department mentions the Dorman factors, but then avoids a Dorman analysis and instead finds exigency based on “close pursuit” without exploring which if any of the factors existed); People v. Solimine, 512 N.Y.S.2d 501 (N.Y. App. Div. 1987) (Court mentions Dorman factors and finds exigent circumstances without explaining which if any of the Dorman factors existed. The facts suggested the police entered because of the danger defendant posed to police and the threat that he would blow up the police with a tank of propane gas); People v. Gordon, 487 N.Y.S.2d 849, 850 (N.Y. App. Div. 1985) (Second Department mentions the Dorman factors and then finds that there were exigent circumstances but does not explain which of the factors existed or conduct any semblance of a Dorman factor analysis)
42 See e.g. United States v. Mendoza, 2011 U.S. App. LEXIS 778 (2d Cir. N.Y. Jan. 13, 2011) (Court finds exigency based on apprehension that evidence might be destroyed, but also mentions Dorman factors without examining how many of the factors existed); United States v. Guevara-Feli, 112 F.3d 506 (2d Cir. Vt. 1997) (Court mentions Dorman factors, notes the existence of the first factor and infers the likelihood of the second factor before skipping the remainder of the Dorman analysis stating there was “much more” to the case and finding exigency “for the purpose of securing the premises and preserving the evidence”).
43 Dorman, 435 F.2d at 391 (“The scope of warrantless searches in cases of arrest reaches not inconsiderable breadth by virtue of the doctrine upholding a warrantless search made incident to a lawful arrest, where the area and purpose of the search serve to protect the arresting officer or avoid escape or destruction of evidence ... Another doctrine excusing failure to obtain a warrant in case of entry for arrest has been cast in terms of "exigent circumstances," or "necessitous circumstances."

44 See supra note 31, at 6.
45 See supra note 33, at 6.
clear guidelines for analyzing or understanding exigent circumstances, both by lower courts and by the police. The failure is particularly keen in the emergency situation context, which will be discussed in greater detail later. But in short, emergency situations are a particular brand of circumstances where even if none of the Dorman/Cruz factors are met there immediate police action can sometimes be necessary in order to avert the loss of life.

The second issue with the use of Dorman/Cruz factors is its inconsistency with the landmark decision by the Supreme Court in Payton v. New York, 445 U.S. 573, 576-577 (1980), restricting the scope of warrantless entry. Payton is a 1980 Supreme Court case concerning the legitimacy of a New York law that permitted forceful warrantless entry into a suspect’s home in order to make a felony arrest.

In 1970, New York detectives had assembled evidence sufficient to establish probable cause to believe that Theodore Payton had murdered the manager of a gas station. On January 15, six officers went to Payton’s apartment in the Bronx at 7:30 a.m. without a warrant. They knocked on the door but no one responded. However light and music emanated from the apartment, giving the police probable cause to suspect that Payton was at home. Pursuant to the New York Code of Criminal Procedure the officers broke into Payton’s apartment using crowbars with the intent to arrest Payton. Although Payton was not there, police were able to obtain a .30-caliber shell casing in plain view. The evidence was admitted at Payton’s murder trial.46

At the center of this case is the New York Criminal Procedure Law §177 and 178. §177 permits a peace officer to arrest a person without a warrant if a felony has been committed and the officer has reasonable cause for believing the person to be arrested was the malfeasor.47 §178 allowed the police to break open the door if the officer was to make an arrest and were refused admittance.48 In addressing Payton, the Supreme Court begins by pointing out that the particular warrantless entry “might have been justified by exigent circumstances” but declines to consider whether or not they were because the New York courts did not rely on exigent circumstances as their justification. The Supreme Court then explains that an arrest in the home is “an invasion of the sanctity of the home” and therefore requires either a warrant or exigent circumstances. Absent either a warrant or exigent

48 Id.
circumstances, neither “statutory authority” nor clear presence of probable cause, are sufficient to permit a warrantless home entry.⁴⁹

The court in Payton did not define exigent circumstances, in fact it declines to consider if there were exigent circumstances. The New York State statute authorized police entry for the purpose to arrest, therefore there was no need for the New York courts to even consider exigent circumstances. However, according to Payton, if the police do not have a warrant, probable cause and purpose to arrest were not enough to permit a warrantless home entry. In that sense, Payton was a “landmark” case that highlighted the importance of the warrant requirement especially for nonconsensual home entries.⁵⁰

In order for the prosecution to satisfy the statutory elements of §177 and §178, they needed to show the high “gravity of the crime”, a “suspect’s likelihood to be armed”, “probable cause to believe the suspect committed the crime” and “strong reason to believe that the suspect is in the premises”. The Supreme Court in striking down §177 and §178 of the New York Criminal Procedural Law, signified that the Fourth Amendment requires more than the combination of these four factors. Yet nevertheless there have been multiple cases where New York courts have found exigency to justify a warrantless entry without even consideration of “circumstances of entry” or “likelihood suspect will escape if not swiftly apprehended”.⁵¹ To allow a finding of exigent circumstances, in the event police do not have a warrant, based almost entirely upon the gravity of the crime and reasonable cause that the suspect is in the premise would seem to directly contravene the holding and purpose of the decision in Payton.

⁴⁹ Payton, 445 U.S. at 589.
⁵¹ See e.g. People v. Scott, 6 A.D.3d 465, 466 (N.Y. App. Div. 2d Dep't 2004) (“The police had probable cause to believe that the defendant was the individual who shot and wounded two men in separate incidents in Brooklyn the night before his arrest. The police also had information indicating that the defendant fled from Brooklyn to an apartment in Staten Island where his mother resided, and that he was inside the Staten Island apartment when they arrived.”); People v. Arriaga, 309 A.D.2d 544 (N.Y. App. Div. 1st Dep't 2003) (“Defendant’s warrantless arrest in his apartment was properly based on exigent circumstances, given the seriousness of the crime (which involved the firing of a gun and a threat to kill the complainant), the complainant’s statement that defendant was still wielding a gun as he fled toward his home, the evidence clearly identifying defendant as the suspect, and the officers’ observations and other reasons to believe that defendant was at the premises.”).
B. THE APPROPRIATE USE OF THE DORMAN/CRUZ FACTORS IN EXIGENT CIRCUMSTANCE

The solution is simple. Payton is very explicit that warrantless home entry requires exigent circumstances. But the value of the Dorman/Cruz factors is undeniable. Obviously in a situation where the defendant is accused of a misdemeanor, e.g. criminal possession of marijuana in the fifth degree, it would be inappropriate for police to affect a warrantless entry just because the suspect was in the process of destroying evidence. The fact that neither the first nor second factors of Dorman/Cruz have been satisfied is a relevant part of the exigent circumstance inquiry. As the Eighth Circuit has characterized, the Dorman/Cruz factors is a “balancing test” and balances the need for maintaining public order versus the need to protect a private individual’s right to safety.52 On the other hand, the Dorman/Cruz factors alone should not enough for a finding of exigency. As explained earlier, there are situations where the exclusive of Dorman/Cruz factors conflict with the Supreme Court holding in Payton and also that changes in jurisprudence have led to an evolution in the understanding of what constitutes exigent circumstances.

The solution is to require both a showing of “urgent need” and also a showing that the police action was “reasonable”, i.e. a balancing test. To demonstrate “urgent need”, the state or the federal Government must demonstrate that there was no time to get a warrant, which they can establish by showing either danger to arresting officer, hot pursuit, imminent destruction of evidence, or likelihood suspect will escape if not swiftly apprehended, or any other relevant consideration. The list should be flexible to permit other instances when there is an “urgent need” for police action, but the key consideration should ultimately rely on whether or not police had time to acquire a warrant.53 The more time police have to acquire a warrant, the more difficult it would be for the prosecution to show that there was a real “urgent need” for immediate police action.

52 See e.g. Creighton v. Anderson, 922 F.2d 443, 447 (8th Cir. Minn. 1990).
53 See Barbara C. Salken, Balancing Exigency and Privacy in Warrantless Searches to Prevent Destruction of Evidence: The Need for a Rule, 39 Hastings L.J. 283, 316 (1988) (“Such judicial examination of the time necessary to get a warrant is also found in the decisions of the Seventh, Ninth, Tenth, and Eleventh Circuits. These courts encourage the use of warrants by considering the ability to get a warrant in evaluating the presence of an emergency.”).
To demonstrate that the action was reasonable, courts would apply the *Dorman/Cruz* test, not including consideration of whether or not the suspect will escape if not swiftly apprehended. An unarmed suspect accused of public lewdness for example would be protected from a warrantless arrest. Or in the case of e.g. hot pursuit, even if the police can show urgent need, they would still have to show that either the “suspect was armed” in order to satisfy the balancing test inherent in the *Dorman/Cruz* factors consideration.  

One strong benefit of this framework is that it sets the reasonableness test independent from the exigency test. Setting the two tests apart is consistent with existing Fourth Amendment jurisprudence. It is also consistent with *Payton* which explains that exigent circumstances are necessary for warrantless entry but does not indicate that they are sufficient. Lastly it is conceptually sound. A circumstance by definition is “exigent” if it requires “immediate” attention. Although the *Dorman/Cruz* factors are related to the ultimate inquiry of whether or not police actions were reasonable, they do not explain why there was an “urgent need” for immediate action. In the case of a grave and terrible crime, if exigent circumstances present themselves, immediate police action ought to be upheld as reasonable conduct. However the gravity of the crime itself is irrelevant to whether or not immediate attention was necessary. Imagine hypothetically police after a thorough investigation discovers the address of a suspect accused of a heinous crime. In that situation despite the gravity of the crime, the police have ample time to procedure a warrant from an impartial magistrate before proceeding to the suspect’s residence. The independent requirement of urgent need therefore fits well into the current framework that prioritizes an impartial judicial intermediary between police suspicion and police action. Therefore by separating the two tests of

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54 See Anderson, 922 F.2d at 447 (For description by the Court of the “Dorman’s balancing test for determining whether exigent circumstances exist”).  
55 See Welsh v. Wis., 466 U.S. 740, 752 (1984) (“For example, courts have permitted warrantless home arrests for major felonies if identifiable exigencies, independent of the gravity of the offense, existed at the time of the arrest.”)  
56 See Payton, 445 U.S. at 587-588 (“absent exigent circumstances” a warrantless entry to search is unconstitutional, however the Court did not say that provided exigent circumstances, a warrantless entry becomes constitutional).  
58 See Dorman, 435 F.2d at 392-393 (D.C. Cir. 1970) (“the fact that entry was not forcible aids in showing reasonableness of police attitude and conduct”)
exigency and reasonableness, the court can fashion a consistent and intuitive guideline for both lower courts and police officers.

There are some drawbacks of this alternative test. On the one hand it is still more permissive than the “least intrusive alternative analysis”. There will still be circumstances where police affect a warrantless forced entry even though they might have been less intrusive options ranging from procuring a warrant before the exigency manifests. There will also be another set of circumstances where “urgent need” is met and the test for reasonableness is also met, but where police have a variety of options at their disposal. While the fear that a suspect would destroy evidence is an “urgent need” police could instead of affecting a warrantless entry, detain suspect without placing him under arrest while waiting for a warrant. On the flipside, by requiring both “urgent need” and also subjecting police action to a test of “reasonableness”, there may be circumstances where incriminating evidence becomes suppressed. However as for these latter, the primary purpose of the two prong test is to ensure that the only circumstance where evidence becomes suppressed is when there is no “urgent need” for police warrantless entry. In these circumstances, if the police believe there exists probable cause, then they ought to present their evidence before a magistrate as traditional Fourth Amendment and to apply for a warrant. The increase in bureaucracy is probably justifiable in light of the importance of the “sanctity of the home” and also to prevent the exigent circumstance exception from swallowing the entire realm of police-civilian interactions regarding home entry.

IV. UNDERSTANDING THE EMERGENCY SITUATION EXCEPTION TO WARRANTLESS HOME ENTRIES

In New York State, a warrantless search of a defendant’s residence can be permissible if triggered in response to an emergency situation. The New York doctrine on emergency situations arises from People v. Mitchell, 347 N.E.2d 607 (N.Y. 1976). The test for whether police conduct passes constitutional muster requires

59 See Strossen, supra note 12, at 1173.
that (1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property. (2) The search must not be primarily motivated by intent to arrest and seize evidence. And (3) there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.\(^{61}\) The permissibility of police conduct derives from a police officer’s legitimate role as “community caretakers” and is distinct from their role as “criminal investigators”\(^{62}\). An emergency that concerns the health and welfare of the general public is a subset of community caretaking.\(^{63}\) The emergency situation exception also exists in federal jurisprudence. Federal law recognizes that community caretaking functions are “wholly separate from detecting, investigation, or acquiring evidence of a crime.”\(^{64}\) The Federal Ninth Circuit for example recognizes that there are “two general exceptions to the warrant requirement for home searches: exigency and emergency” and that emergency stems from community caretaking while exigency stems from police investigatory function.\(^{65}\) Police who operate under the emergency exception may enter a home to investigate an emergency that threatens life or limb.\(^{66}\) There is also an implied fourth prong requiring a tailored response to the nature of the emergency.\(^{67}\)

Under the first prong, police in New York must have reasonable grounds to believe that there is an emergency. Reasonable grounds must be based on “objective”, empirical facts. The subjective belief of police officers is not enough to establish that there is an emergency.\(^{68}\) However the “reasonable grounds” test is considered lighter than the “general probable cause” analysis.\(^{69}\) While the vast majority of emergency situations involve human lives in jeopardy, there is one case People v. Boyd, 474 N.Y.S.2d 661 (N.Y. Sup. Ct. 1984), which has suggested that an emergency is “any sudden, unexpected state of affairs that calls for immediate action”, and

\(^{61}\) People v. Molnar, 774 N.E.2d 738, 740 (N.Y. 2002); People v. Dallas, 865 N.E.2d 1 (N.Y. 2007).
\(^{62}\) Molnar, 774 N.E.2d at 739.
\(^{63}\) Id.
\(^{64}\) Lundstrom v. Romero, 616 F.3d 1108, 1120 (10th Cir. 2010).
\(^{65}\) See e.g. United States v. Struckman, 603 F.3d 731, 738 (9th Cir. 2010).
\(^{66}\) Espinosa v. City & County of San Francisco, 598 F.3d 528, 534 (9th Cir. 2010).
\(^{67}\) Molnar, 774 N.E.2d at 741.
therefore extends the emergency doctrine.\footnote{See People v. Boyd, 474 N.Y.S.2d 661, 667 (N.Y. Sup. Ct. 1984).} So far no court has cited the \textit{Boyd} definition of “emergency” in the Fourth Amendment context. Regarding the second prong, under traditional New York jurisprudence, there was a rebuttable inference that “an entry which results in an arrest or seizure of evidence was for the purpose of effecting an arrest or seizure”.\footnote{See \textit{e.g.} People v. Gallmon, 227 N.E.2d 284, 288 (N.Y. 1967); People v. Guins, 569 N.Y.S.2d 541, 542 (N.Y. App. Div. 1991).} However not all New York Courts agree. Other courts believe that the subjective intent of the police is to be determined by the police’s stated reasons for the conduct and the objectives facts and circumstances surrounding the conduct.\footnote{People v Rodriguez, 907 N.Y.S.2d 294, 301 (N.Y. App. Div. 2010).}

\section{Brigham City and the Subjective Motivation Test}

But in 2006, the United States Supreme Court rejected the second prong in \textit{Brigham City v. Stuart}, 547 U.S. 398 (2006), stating that an inquiry into “[t]he officer’s subjective motivation is irrelevant”.\footnote{Brigham City v. Stuart, 547 U.S. 398, 404 (2006).} In Brigham City, Utah, four police officers responded without a warrant at 3 a.m. to a call about a loud party. The officers then entered the yard and saw, through a screen door and windows, an altercation in the kitchen between four adults and a juvenile, who punched the face of one of the adults, causing him to spit blood in a sink. One officer opened the door and announced the officers’ presence. Unnoticed amid the tumult, the officer entered the kitchen and again cried out, and as the occupants slowly became aware that the police were present, the altercation ceased. The officers arrested three of the adults and charged these three accused with contributing to the delinquency of a minor, disorderly conduct, and intoxication.

The Utah Supreme Court found that “the officers acted exclusively in their law enforcement capacity, arresting the adults for alcohol related offenses, and providing no medical assistance whatsoever.”\footnote{Brigham City v. Stuart, 122 P.3d 506, 513 (Utah 2005).} The police had failed the second prong of the three prong Utah test for an emergency situation. Furthermore, because of the emergency aid doctrine’s link to a police officer’s caretaking, the Utah Supreme Court found that it may be invoked only when the purpose of the intrusion is to "enhance the prospect of administering appropriate medical
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assistance, and the rationale is that the need to protect life or avoid serious injury to another is paramount." The case was appealed to the Supreme Court of the United States. Roberts writing for the majority found that the Utah Supreme Court “considered the officers' subjective motivations relevant”. It then reversed the Utah Supreme Court, determining that “the officer's subjective motivation is irrelevant.”

The Supreme Court holding in Brigham City can be viewed as part of a broad movement by the Supreme Court away from the “pitfalls” that have led the court to reject tests dependent on the subjective intentions of police officers. In previous decisions, the Supreme Court has held that subjective intentions are irrelevant for “public safety” exceptions because “undoubtedly” most police officers would act out of a “host of different, instinctive, and largely unverifiable motives” that include “their own safety, the safety of others, and perhaps as well the desire to obtain incriminating evidence”. There is also the belief that “in many, if not most” cases police responding to a crime are both responding to the “emergency situation and to gather evidence.” Trying to decide which motivation is primary is therefore sometimes an untenable doctrine because of the impossibility of isolating the different motivations.

B. IMPACT OF BRIGHAM CITY ON NEW YORK STATE JURISPRUDENCE

The New York Court of Appeals has not yet embraced the Brigham City holding. The last Court of Appeals holding regarding the “emergency situation” was Molnar where the Court upheld a finding of emergency situation based on all three prongs of the Mitchell test. The Court of Appeals explicitly declined to consider whether Mitchell should be reconsidered in light of Brigham City in People v. Dallas, 865 N.E.2d 1 (N.Y. 2007)

75 Id at 514.
76 Brigham City, 547 U.S. at 404.
77 Id.
78 See Davis v. Washington, 547 U.S. 813, 839 (2006); New York v. Quarles, 467 U.S. 649, 655-656 (1984) (subjective motivation of officer not relevant in considering whether the public safety exception to Miranda is applicable); Rhode Island v. Innis, 446 U.S. 291, 301 (subjective intent of police officer to obtain incriminatory statement not relevant to whether an interrogation has occurred); Whren v. United States, 517 U.S. 806, 813 (refusing to evaluate Fourth Amendment reasonableness in light of the officers' actual motivations).
79 Quarles, 467 U.S. at 656.
80 Davis, 547 U.S. at 839 (Thomas, J., concurring).
81 It should be noted that the emergency situation test here is in the context of police entry into a suspect’s home. Since 2001, the Court of Appeals has rejected the primary motivation test for traffic stops in the motor vehicle context. See e.g. People v. Robinson, 767 N.E.2d 638, 642 (N.Y. 2001).
82 Molnar, 774 N.E.2d at 739.
finding that since all three elements of Mitchell were present, there was no occasion to consider the impact of Brigham City. But recently the Second Department has decided a series of cases finding that in light of Brigham City, the second prong of Mitchell is no longer required for finding an emergency situation.

There is substantial merit in the Brigham City ruling. Consider the following hypothetical in a 1999 Law Review illustrates the complexity, irrelevance, and sometimes even absurdity of reliance on primary subjective motivation. “A police officer on routine patrol hears a bloodcurdling scream coming from inside a private residence. … Further analysis is necessary to examine the officer’s subjective response to the scream. In other words, which hat is the officer wearing when he enters the residence? Is he wearing his law enforcement hat, his community caretaking hat, or both?” For a court to distill “which hat” the officer wears is difficult enough. The analysis becomes exceedingly difficult if there is evidence to support the idea that the police officer is wearing both the law enforcement and community caretaking hat. In that case, the Court has to then determine which of the two purposes is “primary”. Furthermore as discussed earlier, the Supreme Court in Quarles declined to put officers in a position

On the other hand there are strong reasons for rejecting the Brigham City decision. Even though Brigham City is a Supreme Court ruling, it is not binding on New York courts. The New York State Constitution states that the people of New York have a right to be secure in the houses against unreasonable searches and seizures. New York courts have “not hesitated” in the past to interpret the New York Constitution, Article I §12 independently of the Fourth Amendment to protect New York citizens from unreasonable government intrusion. Although there is a general support for a “policy of uniformity”, two reasons for the State Court to diverge from Federal Courts is to

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83 Dallas, 865 N.E.2d at 1.
84 See e.g. People v Leggett, 904 N.Y.S.2d 773, 774 (N.Y. App. Div. 2010) (“in light of the United States Supreme Court’s determination in Brigham City v Stuart (547 U.S. 398, 404, 126 S. Ct. 1943, 164 L. Ed. 2d 650) that “[t]he officer’s subjective motivation is irrelevant” to Fourth Amendment analysis, an inquiry into the subjective motivations of the police is no longer necessary in determining whether that amendment was violated”); People v. Denis, 909 N.Y.S.2d 325, 327 (N.Y. Dist. Ct. 2010) (“an inquiry into the subjective motivations of the [official] is no longer necessary in determining whether that amendment was violated”).
86 N.Y. CLS Const. art. I, § 12.
best promote predictability and precision in judicial review of search and seizure cases and also to promote the protection of the individual rights of our citizens. In the situation here, the Brigham test increases the probability of abuse of process. New York courts have held that the emergency exception is “susceptible of abuse”, must be “narrowly construed” and therefore should be inapplicable where “police conduct was clearly motivated by the desire to discover evidence of criminality.” Whether or not there was “reasonable grounds to believe that there is an emergency at hand” can be very difficult to determine. Furthermore courts are generally reluctant to second-guess the judgment of officers on the scene because of the danger it could pose to bystanders. So the first prong of Mitchell is both difficult to overcome and also problematic to overcome. Without the second prong, given the reluctance of courts to second guess the decisions of officers, the emergency doctrine could become abused to retroactively justify warrantless police entry into a suspect’s house.

Furthermore, the second prong of the Mitchell test coexists well with the understanding of “community caretaking” versus “crime fighting” roles. If the primary motivation of the police was to arrest or seize evidence, they are acting as “investigators” or “crime fighters”, and therefore cannot apply the “emergency situation” justification. The “emergency situation” justification is only available to police when they act in their role as “community caretakers”. Maintaining the doctrinal distinction between caretakers versus investigators can be very important in creating a clear and coherent doctrine. For example, the Fourth Amendment explicitly deals with searches and seizures. Yet when police are acting as community caretakers, they are ostensibly neither searching nor seizing. In fact, the second prong of Mitchell specifically precludes the State from admitting into evidence anything seized by police acting as “investigators”. Arguably if police are acting as “community caretakers” and also act with the mens rea of “community caretakers”, they are neither searching nor seizing and therefore are

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90 Cloud, 571 N.Y.S.2d at 446 (“in our view, any court or Judge should be extremely circumspect in second-guessing the judgment of a police commander at a scene such as this. Any delay, which the obtaining of a warrant would entail, clearly put at risk the safety of these uninvolved persons, who were obviously ideal potential hostages for use in effecting escape.”)
outside the purview of the Fourth Amendment entirely. Therefore rather than thinking of the three prong test as a test of “reasonableness” under the Fourth Amendment, it is instead a test to see if the police action was genuinely a subset of “community caretaking” and therefore outside the scope of the Fourth Amendment. Under this understanding, the second prong plays a very critical role in the entire framework. If police are not primarily motivated by their role as community caretakers, then they are not operating outside of the Fourth Amendment and therefore have to be subject to a level of scrutiny that would otherwise not be constitutionally mandated.

C. THE EMERGENCY SITUATION EXCEPTION AND OTHER CONSTITUTIONAL SAFEGUARDS

Although this paper discusses the emergency situation exception in the Fourth Amendment, warrantless home entry context, a proper analysis needs to also consider its intersection with other constitutional safeguards. In Michigan v. Bryant the Supreme Court considered the intersection of emergency situation with the Sixth Amendment. Michigan police dispatched to a gas station found Anthony Covington who had been mortally wounded. The Covington told the officers the identity and description of the shooter but then died the next day. During the trial the officers testified to the content of the conversation. The defendant appealed his conviction arguing that the Sixth Amendment’s Confrontation Clause renders the police testimony inadmissible because of hearsay. The Supreme Court held that because of the ongoing emergency, and because statements were made to police to assist with the ongoing emergency, they were “nontestimonial” in nature. Because the statements were nontestimonial, because the purpose of the police interrogation was to respond to an ongoing emergency, the statements were “not within the scope” of the Sixth Amendment’s Confrontation Clause. Although the Court did not speak directly about community caretaking being outside the scope of most constitutional safeguards, it acknowledged that police officers function “as both first responders and criminal investigators”.

91 Mary Elisabeth Naumann, The Community Caretaker Doctrine: Yet Another Fourth Amendment Exception, 26 Am. J. Crim. L. 325, 342-343 (1999) (“Some courts hold that community caretaking activities do not constitute Fourth Amendment encounters because they do not involve a criminal investigation, and, therefore, the person is free to leave. Once the person does not feel free to leave, a stop results and no community caretaker actions can occur.”).
93 Id.
the “primary purpose” of the interrogation is relevant to whether or not the statements are “testimonial” and therefore within the scope of the Sixth Amendment.94

In New York v. Quarles, 467 U.S. 649 (1984), the suspect made self-incriminating statements before being read his Miranda rights, as he was being questioned by the police. The police were trying to locate a gun the suspect disposed off, and the testimony was suppressed because the question violated the suspect’s Miranda’s rights. The Supreme Court reversed, holding that the threat to public safety outweighed Fifth Amendment privileges. The dissent argued that a public safety exception to Miranda is unnecessary because an officer can simply ask the necessary questions to the suspect and the prosecution could then decline to introduce the incriminating responses. The majority responded by specifically refusing to place police officers in the “untenable position” of having to consider “in a matter of seconds” whether it is better to ask the necessary questions and render probative evidence inadmissible or to give the Miranda warnings first and risk the ability to obtain information possibly necessary to “neutralize the volatile situation” confronting them.95 The dissent however argues that inability to prosecute because police cannot find independent proof of guilt will not be common.96 What is especially relevant is O’Connor’s occurrence where she pointed out that the Fifth Amendment does not protect an accused from being compelled to surrender “nontestimonial evidence” against himself."97 The majority did not directly address the difference between testimonial and nontestimonial statements. However it did hold that some questions are necessary to secure the safety of police or the safety of the public, whereas other questions are designed to “elicit testimonial evidence”.98 The inference is that whereas the former deals with “public safety” or an ongoing emergency, it is not necessarily if ever “testimonial” in nature and therefore might be outside the scope of Fifth Amendment protection altogether.

94 Id.
95 Quarles, 467 U.S. at 657-658.
96 Id at 687.
97 Id at 666.
98 Id at 658-659.
V. EMERGENCY SITUATION VERSUS EXIGENT CIRCUMSTANCES

There are two distinct frameworks concerning the relationship between “emergency situation” and exigent circumstances”. The first framework is that they are separate justifications, either of which can independently permit a warrantless police entry into a defendant’s home. The second framework considers “emergency situation” to be a subset of “exigent circumstances”. Under the second framework, circumstances that contribute to a finding that the situation was e.g. “dangerous and volatile” situation or an “unreasonable risk” could factor into a finding of exigency.

The first framework derives from the theory that sometimes police act in a “crime-fighting” role, implicating exigent circumstances, and other times they act in a “community caretaking” role, implicating the emergency situation.99 Some New York cases have been aligned with this framework, finding that “emergency exception” is separate from the general “exigency exception”.100 Other New York cases seem to have labeled the “emergency situation” as a de facto subset of “exigent circumstances”. However upon scrutiny it appears that they evaluate whether or not the emergency situation existed with the independent Mitchell test, therefore treating emergency situation as a de jure independent exception for warrantless entry.101 Because the tests are independent, the first framework allows the State to find that a warrantless entry is excusable under both the exigent circumstance doctrine and also the emergency situation doctrine.102 To invalidate, ostensibly a higher Court must find that neither exigent circumstances nor emergency situation applied.

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99 See Naumann, supra note 91, at 332; Decker, supra note 85, at 445.
100 See e.g. Williams, 581 N.Y.S.2d at 23; Boyd, 474 N.Y.S.2d at 667.
101 See e.g. Colao v. Mills, 834 N.Y.S.2d 375, 377 (N.Y. App. Div. 2007) (“The Court of Appeals outlined the elements of the exigent circumstances exception as follows: the police must have reasonable grounds to believe that an emergency exists or there is an immediate need for their assistance to protect life or property, there must be some reasonable basis to associate the emergency with the area to be searched, and the search must not be motivated by an intent to arrest and seize evidence”); People v. Parker, 750 N.Y.S.2d 405, 406 (N.Y. App. Div. 2002) (“We reject defendant’s contention. The police were justified in conducting a warrantless search of the residence based on exigent circumstances, i.e., the report of gun fire and the presence of several people inside the house, including children”).
102 See People v. Stevens, 871 N.Y.S.2d 525 (N.Y. App. Div. 2008) (“Supreme Court properly determined that the police were justified both by exigent circumstances and by the emergency doctrine to enter his home without a warrant.”).
Under the second framework, an emergency situation is one of many factors that can be considered for a finding of exigency. While courts might not explicitly use the words “emergency situation” there have been decisions where the courts found exigency despite circumstances that appear to be more related to an emergency. In these cases the Court either explicitly or implicitly applied the Dorman/Cruz factors instead of the Mitchell test. The second framework interacts well with the language used by the Supreme Court in Payton, that the “basic principle of Fourth Amendment law that searches and seizures inside a man’s house without warrant are per se unreasonable in the absence of some one of a number of well defined exigent circumstances”. One way to understand the second framework is that whenever the government engages in a warrantless entry and conduct a search or seizure, the Fourth Amendment is implicated. If the Fourth Amendment is implicated, then a search or seizure is unreasonable unless there were “exigent circumstances”. This second framework could explain why the Supreme Court reversed the second prong of the Mitchell test in Brigham City. If emergency situations fall under Fourth Amendment jurisdiction, then they can only permit a warrantless entry if they created an “exigent circumstance”. Police motivation, whether to protect lives or to affect an arrest, is therefore irrelevant to whether or not an exigent circumstance existed.

The second framework also allows the courts to employ a hybrid analysis where they can combine Dorman/Cruz factors with possible danger to life of police or bystanders, and find that there were exigent circumstances to permit a warrantless police entry. It is most applicable in situations where the source of the danger is the suspect that is to be seized or the source of danger is something that the police are searching for. In these circumstances, it is clear why the Dorman/Cruz factors are relevant. Some of the Dorman/Cruz factors, e.g. the gravity of crime, or whether or not the suspect is armed, can contribute to a finding that the suspect poses...

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103 See e.g. McBride, 872 N.Y.S.2d at 111 (N.Y. App. Div. 2009) (“We conclude that this warrantless entry was justified by exigent circumstances, including, ... the behavior and demeanor of the woman that suggested a dangerous and volatile situation”) (emphasis added); People v. Pollard, 761 N.Y.S.2d 154, 155 (N.Y. App. Div. 2003) (“When defendant’s 13-year-old sister opened the door and appeared to be in an anxious state, they [police] had reason to believe the possibly armed and dangerous defendant was inside the apartment with her and that any delay for the purpose of securing a warrant would have created an unreasonable risk”) (emphasis added); Funches, 679 N.E.2d at 637 (N.Y. 1997) (“exigent circumstances justified a warrantless entry into the apartment, in order to avert the threat of danger to the police officers on the scene”).

104 Payton, 445 U.S. at 587.

105 See e.g. McBride, 928 N.E.2d at 1031.
a danger to police or other bystanders. Contrariwise if the suspect is not armed or if suspect is not likely to escape (and mingle with bystanders), then there is a lower likelihood of an emergency and therefore a lower likelihood of exigency. The second framework falls apart when the source of the emergency is not the suspect. The emergency situation exception is invoked frequently in cases of fire. In these cases the Dorman/Cruz factors clearly do not apply. The government officials, often firefighters, are on the scene to put out a fire or to investigate what caused a fire. There is no “suspect” and therefore that already renders most of the Dorman/Cruz factors irrelevant to the inquiry.

There is also frequent confusion in language use that has led courts to muddle the emergency doctrine with exigent circumstances. The second prong of the Mitchell test may have been a contributing factor. Although there are rare exceptions, generally speaking it is difficult for a court to find that there were both exigent circumstances and an emergency situation. Ordinarily in most exigent circumstance cases, although the police proceeded without a warrant they often do have probable cause to associate a suspect with a grave and serious crime. The prosecution would have to argue that although the suspect is accused of committing a grave and serious crime, the police were not primarily concerned about making an arrest or collecting evidence. If that is the case then if New York courts accept the Brigham City decision, then there might be a decrease in confusion between the uses of exigent circumstance versus emergency situation.

A resolution that protects the cohesion of the second framework is to isolate situations where emergency exists because of a dangerous suspect versus environmental considerations. It can be argued that in situations where an armed suspect poses a danger to the community, police response can be characterized as a “law enforcement” activity. Danger to police or bystanders could be one of the many exigencies that permit police to affect a warrantless entry, arrest, and search. In order to evaluate the danger, the State ought to be required to

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106 See People v. Vennor, 577 N.Y.S.2d 189, 190 (N.Y. App. Div. 1991) (“Finally, there is no evidence that defendant presented a danger to the officers or to the public”).
108 State v. Jones, 947 P.2d 1030, 1037 (Kan. Ct. App. 1997) (“the exigent circumstances exception is distinct from the emergency exception, and the two are often confused”).
109 See supra note 102.
110 See supra notes 25, 26.
establish the first and third prong of the Mitchell test but because it is part of the exigent circumstance framework, the second part is not required. The state will still have to prove that the search was “reasonable” through the use of the Dorman/Cruz factors. In other situations where there is no “suspect” and the emergency comes from e.g. fire, then this falls under purely community caretaking. Evidence gathered by government officials because it was in plain view should be subject to all three prongs of the Mitchell test but not the Dorman/Cruz factors because it falls outside the purview of the Fourth Amendment.

A. DEVELOPING A COMMUNITY CARETAKING DOCTRINE

The current lack of any official community caretaking doctrine is one fundamental drawback of all jurisprudence that governs the interaction between police and civilians. It has created doctrinal confusion not only in Fourth Amendment jurisprudence but also in Fifth Amendment and Sixth Amendment jurisprudence.\(^\text{111}\) However the creation of a community caretaking doctrine will be consistent with the existing case law and other legal frameworks. And furthermore a community caretaking doctrine is one that will help resolve many conflicts not limited to be especially when police are presented with an emergency situation.

The community caretaking doctrine would apply when police officers are engaging in community caretaking instead of investigatory function. In that respect, some subjective motivation test will be a necessity. Because of the frequency of mixed motivations, the doctrine’s application can be limited to either situations where the “primary” motivation is community caretaking, or situations where the “only” motivation is community caretaking. In the former, there are evidentiary difficulties in instances of mixed motivation. However it would allow the doctrine to command greater scope because of the high frequency of such cases. In the latter, there will be an easily applicable “bright line” rule. Mixed motivation scenarios will be considered outside the scope of community caretaking and governed instead by the applicable doctrine, often depending on what Federal or State Constitutional rights a defendant asserts. In addition to the subjective motivation test, there must be an objective test to determine whether or not the situation fall under community caretaking. Community caretaking would be understood as a function that is “totally divorced from the detection, investigation, or acquisition of evidence

\(^{111}\) See *supra* note 92, 95.
relating to the violation of a criminal statute.”112 This definition includes obviously includes emergency situations such as the protection of police officers and the protection of civilians.

Once a situation passes both the subjective and objective community caretaking doctrinal tests, the situation then falls outside the scope of many constitutional safeguards including but not limited to the Fourth Amendment. Because community caretaking do not implicate acquisition of evidence, they cannot be construed as searches under the Fourth Amendment prohibition of unreasonable search and seizure. Likewise for Fifth and Sixth Amendment purposes, statements made to an officer performing his duties as a community caretaker can be considered nontestimonial and therefore outside the scope of these constitutional prohibitions. Given the implications, it becomes very important to apply both the subjective and objective tests with scrutiny to ensure that the community caretaking doctrine does not become an end-run around constitutional safeguards.

However there is still a wide category of situations where community caretaking could intrude on an individual’s expectations of privacy. Municipal police engage in a wide variety of community caretaking activities outside of the scope of emergencies including e.g. the “mediation of noise disputes, the response to complaints about stray and injured animals, the taking of lost property into their possession and many others.”113 A not unlikely hypothetical is a police intrusion into the homes of the elderly in response to calls from anxious relatives.114 Even putting aside pretextual police entries, entries pursuant to the community caretaking objective can still violate an individual’s privacy irrespective of whether there was any search or seizure involved. One solution is to impose a third test of general “reasonableness” in order to ensure that the particular caretaking interest is not outweighed by the particular privacy or other interest violated during the police entry.115 The reasonableness test can be justified under the general and fundamental right to privacy independent of the Fourth Amendment.116

114 Id. at 313
115 Id.
Combined these three tests (subjective, objective, and reasonableness) will provide courts with a framework for disposing of situations where police entry is made pursuant to their authority as community caretakers. Properly constructed, the framework can then be extended outside of just entries and also into nontestimonial statements or other areas of law that implicate community caretaking.

VI. CONCLUSION

The freedom of the people to be safe from unreasonable searches and seizures in their own homes depends on a coherent Fourth Amendment jurisprudence. An incoherent jurisprudence will prevent lower courts and police officers in the field from understanding their obligations and limitations. This paper proposes a simple and orderly framework for evaluating warrantless entries that are the product of exigent circumstances and also the product of emergency situations. In regards to exigent circumstances, the State ought to be required to show both an “exigency” and also that the entry satisfies a test for “reasonableness”. Both are necessary but not sufficient elements for a permissible warrantless entry into a person’s home. Only if both are satisfied can the evidence be held admissible in court. In regards to the emergency doctrine, courts ought to make a distinction between emergency that stems from a dangerous defendant versus emergency that arises because of circumstances unrelated to the defendant. In the former, the Court should treat the emergency as an exigent circumstance. The courts should not look into the subjective motivation of police and should also test the police entry for reasonableness. The rationale for this approach is that in the former police, although acting to protect lives, are still acting as law enforcement agents. When the emergency does not relate to the defendant however, government officials which may or may not be police are not actually affecting a search or seizure. Their actions fall under the community caretaking principle and therefore are outside the scope of the Fourth Amendment. To evidence collected as a result of these latter situations, the second prong of the Mitchell test is a necessity because it determines whether the government official’s action was caretaking or law enforcement; inside or outside Fourth Amendment protection. With the help of these rules, higher courts could fashion a strong, coherent and readily understandable jurisprudence that provides clear guidance to lower courts and police officers.