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There's no place like home?

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The maxim “a man’s house is his castle” is one of the oldest and most deeply rooted principles in Anglo-American jurisprudence. On Wednesday, the Supreme Court will hear oral argument in a case that may test how much protection the Fourth Amendment truly provides the home. In *Caniglia v. Strom*, the issue is whether officers may rely on the “community caretaking” exception to the warrant requirement when conducting a warrantless search of and seizure within a home.

Background

During a heated late August argument in 2015, Edward Caniglia dramatically presented his wife of 22 years, Kim Caniglia, with an unloaded gun and requested that she put him out of his misery. She did not. Instead, she threatened to call 911. Edward temporarily left their home to “take a ride.” When he returned, the couple resumed arguing. This time, Kim decided she would leave. She packed a bag and overnights at a hotel. Edward remained home, alone.

The next day, concerned that she and Edward had not communicated, Kim called the Cranston, Rhode Island, police department’s non-emergency number, requesting that they escort her home and perform a wellness check on her husband, given his prior day’s request and potential for self-harm. Police managed to reach Edward via telephone and escorted Kim back home, where they instructed her to remain in her car.

Upon arrival, officers spoke with Edward outside the Caniglia home. He confirmed the marital spat, as well as his prior day’s request that his wife shoot him, as he “was sick of the arguments” and “couldn’t take it anymore.” A couple of the officers on the scene reported that Edward was calm and cooperative; however, the ranking officer on the scene pronounced Edward “imminently dangerous to himself and others” and arranged for an ambulance transport to obtain a psychiatric evaluation. According to Edward, he agreed to go to the hospital on the condition that police would not confiscate his handguns.

None of the officers on the scene recall such an agreement, however. In fact, after the ambulance drove off, the ranking officer on the scene convinced Kim that her husband had consented to a search of their home. She then guided officers to Edward’s handguns and ammunition, which they seized, knowing that Edward had objected to the seizure. The officers said that, given Edward’s mental state, they believed leaving the weapons in the home would pose a danger to Edward, Kim and other people living in the neighborhood.

Meanwhile, at the hospital, Edward was evaluated but not admitted. Nor was he ever arrested or charged with a criminal offense. After the incident, the Caniglias made multiple unsuccessful attempts to retrieve the guns. They were finally returned in December.

Decisions below

Edward Caniglia sued the city of Cranston and individual officers alleging, among other federal and state law claims, a Section 1983 violation of his rights under the Second, Fourth and Fourteenth Amendments, and seeking money damages as well as injunctive and declaratory relief. Specifically, under the Fourth Amendment, Caniglia asserted that the seizures of his person and his guns were unreasonable.

The district court ruled against Caniglia on most of his claims, and he appealed to the U.S. Court of Appeals for the 1st Circuit. The government opposed the appeal, asserting that the officers' warrantless search of the Caniglias' house and seizure of the guns were objectively reasonable under *Cady v. Dombrowski*, which recognized a community caretaking exception to the warrant requirement. The government argued that this exception authorized the warrantless conduct in furtherance of "community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." The 1st Circuit affirmed, sided with the government and, for the first time, extended *Cady's* authorization of warrantless search and seizure inside the home, joining "ranks with those [circuit] courts that have extended the community caretaking exception beyond the motor vehicle context." On the basis of this split in the federal courts of appeals, Caniglia petitioned the Supreme Court for certiorari, which was granted.

Discussion

The home is the most sacred space under the Fourth Amendment. Without a judicial warrant, governmental intrusions there are almost always a violation of the Fourth Amendment. Compared to other areas protected by the Fourth Amendment, the home's sanctity occupies such a privileged status that even warrantless searches of its curtilage – the area immediately adjacent to and surrounding the home — are presumptively unreasonable. The home is first among equals; even if the government has probable cause to believe a home contains evidence of crime, without a warrant, searches are per se unreasonable. Analysis of the officers' search of the Caniglias' home will likely begin with the presumption of unconstitutionality; overcoming such a presumption may prove to be an uphill battle for the government for several reasons.

First, the officers' warrantless search and seizure here does not satisfy the usual probable cause, exigency- or imminent emergency-based exceptions that authorize forgoing a warrant. At the time police entered and searched the home, there was no ongoing or unfolding threat; Caniglia had been seized by officers and was en route to the hospital. Nor was there any imminent danger to life or limb facing the officers, either Caniglia or proximate bystanders. The government may argue and make a stronger case for one or more troubling eventualities, e.g. that Caniglia may soon have self-harmed, killed his wife or both. Eventualities, however, do not an exigency make, especially on these facts.

Second, *Cady's* community caretaking exception to the warrant requirement involved the warrantless post-accident discovery of a gun during a routine search of an intoxicated off-duty officer's damaged, impounded and towed car. Unlike homes, cars embody a type of built-in

exigency, given their “ready mobility” which allows them to travel quickly and extensively. Attempting to secure a judicial warrant prior to searching a vehicle is often impractical; unlike when police seek to search a home, by the time officers secure a warrant to search a vehicle, it could be long gone, crossing jurisdictional lines while transporting evidence of criminality.

Ready mobility – the *raison d’être* of transportation — as well as the extensive intrusion of governmental licensing, regulation, inspection and examination, lowers our reasonable expectation of privacy in vehicles. As such, governmental searches of vehicles *regularly* occur via exceptions to the Fourth Amendment’s warrant requirement. Under *Carroll v. United States* and the “automobile exception,” police can conduct warrantless searches of vehicles and their containers based on probable cause. If police believe a person within a vehicle is armed and presently dangerous, police may search the vehicle without a warrant for weapons under *Terry v. Ohio*. Warrantless searches of lawfully seized vehicles routinely occur via the inventory search, announced in *Colorado v. Bertine*. Even if an arrestee is outside of a vehicle but recently occupied it, police can search it incident to lawful arrest and without a warrant, per *Arizona v. Gant*. *None* of these exceptions to the warrant requirement is available for the entirety of the home.

Third, the black letter law of *Cady* is unambiguous: The opinion says “there is a constitutional difference between houses and cars,” which seems to expressly limit the community caretaking exception.

That said, the “what if?” scenarios police avoided by confiscating Caniglia’s guns are hard to ignore. The potentially lethal combination of domestic strife and in-home firearms is well documented. More than one in four homicides in the United States are related to domestic violence. Nearly half the women murdered in the United States are killed by a current or former intimate partner; more than half of these women are killed by firearms. Moreover, intimate partner homicides often result in multiple victims, be they coworkers, friends, new dating partners, strangers, police officers or children. Additionally, **it is not uncommon** for the perpetrators of such homicides to die by suicide. That Kim Caniglia summonsed police to a volatile marital home that housed weaponry may prove most useful to the government’s position and the 1st Circuit’s holding. Balancing the interests, as well as assessing the officers’ reasonableness in seizing Caniglia’s guns, may provide the government with a “get out of jail free” pass via a narrowly drawn exception on the specific facts of the case, even if, per court precedent, the officers literally went too far when they entered the Caniglia home.

Questions to look for at argument

1. What is community caretaking?

Does the community caretaking exception have a place in the home? Look for the court’s willingness to assess the ways in which the split circuits define community caretaking. The **joint amicus brief** submitted by the American Civil Liberties Union, Cato Institute and American Conservative Union Foundation does a great job of locating and rooting the *Cady* search exception in police departments’ caretaking not of the community in general, but of impounded vehicles and their inventoried contents. Given the jurisprudence, at least some justices may view the 1st, 5th and 8th circuits (as well as some state courts) as having “gone rogue” in sanctioning suspicionless, warrantless police searches of the home.

2. *Where were the guns?*

Listen for discussions regarding exactly where the officers were located when they located the guns. It may matter. Whether officers' presence on the premises was lawful will determine whether the "plain view" doctrine of *Payton v. New York* is implicated. Under plain view, if the guns were out in the open and their criminality was immediately apparent (though, given the Second Amendment, that would be hard for the government to prove), lawfully present officers could seize them without violating the Fourth Amendment if their ability to do so did not infringe upon a protected interest. Again: whether officers obtained a valid consent to search will matter regarding their lawful presence.

3. *Does officer trickery or deception matter?*

There seem to be two incidents of governmental deception on these facts: (1) the "agreement" with Caniglia that officers would not seize his guns if he allowed himself to be transported to the hospital for psychiatric assessment, and (2) the communication with Kim Caniglia regarding her husband's position on the search of their home. Though both incidents may raise an eyebrow or two at argument, deception, on its own, will not likely matter constitutionally, as the 1st Circuit noted. Still, the factual disputes surrounding what officers told Kim to gain entry to the Caniglia home were significant enough for the 1st Circuit to "assume that the officers' entry into the home was not only warrantless but also nonconsensual." Perhaps such a finding will rear its head during oral argument, especially given the potential constitutional importance of consent to search and seize on these facts.

4. *Did the Caniglias consent?*

Interestingly, the doctrine of consent is one of the only two ways in which officers could have, on these facts, constitutionally searched the home and seized Caniglia's guns. The government will almost certainly argue that although Caniglia clearly objected to the seizure of his guns and ostensibly the search to locate them, both Caniglias (as owners or possessors of common authority in the marital home) had actual authority to consent to the government's search. The act of Kim Caniglia leading officers to her husband's guns may be examined for its explicit or tacit consent to search their home, as well as her apparent authority (as a joint user) to consent to the seizure of her husband's guns.

Another possible question: Was the "agreement" not to seize his guns Caniglia's tacit refusal to consent, or merely a limiting condition placed on the government's search? If so, officers may have exceeded the scope of Caniglia's consent (i.e., do not search for my guns' location inside my home). The relevant test, outlined in *Florida v. Jimeno*, asks whether an objectively reasonable person would have understood what the exchange between the police and Caniglia meant.

Additionally, the government will have to contend with the fact that Caniglia may have been seized at the time of his "consent." Under the Fourth Amendment, consent must be freely and voluntarily given, not the product of duress or coercion, per *Schneckloth v. Bustamonte*. Though Caniglia had not been arrested, he almost certainly was seized and, on police orders, about to be transported for psychiatric evaluation. As the test of voluntariness depends on the totality of the circumstances, the court might inquire as to whether Caniglia's will was "overborne" or his capacity for self-determination "critically impaired."

Finally, police absenting the objecting Caniglia prior to their warrantless search of his home may offer an interesting mash-up of the court's analysis in *United States v. Matlock* and *Georgia v. Randolph*. Both cases tackle actual authority to consent to an in-home search granted by one of a home's joint occupants. *Matlock* involved an on-the-premises refusal to consent by one of the joint occupants; *Randolph* involved an off-the-premises refusal. Will it matter to the court that the reason Caniglia was transported to the hospital may have been to get into the house through his wife's consent (which, itself, may have been gained via officer deception and, under the circumstances, contrary to *Schneekloth*)?