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John F. Decker

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EMERGENCY CIRCUMSTANCES, POLICE RESPONSES, AND FOURTH AMENDMENT RESTRICTIONS

JOHN F. DECKER*

* Professor of Law, DePaul University College of Law. The author wishes to acknowledge the superb research assistance of Amy Davison, Angel Murphy, and Jennifer Snyder, students at the DePaul University College of Law.

I. INTRODUCTION

A. BACKGROUND

In a large police department, such as one in a large municipality or a state police agency, law enforcement officials must simultaneously respond to a myriad of "crisis" situations. Some of the situations police encounter will involve serious criminality, while others will involve only civil concerns. One officer may be responding to a report of a possible burglary in progress in a residence, while another responds with firefighters to the scene of a fire in a commercial structure, and a third to a street loca-

tion where an unattended child wanders aimlessly. The first officer may enter the residence to find no burglar or any other person, but rather a faulty alarm system and, more interestingly, numerous marijuana plants belonging to the absent homeowner. The second officer may be examining a fire of suspicious origin and finding evidence of arson, which will eventually lead to uncovering an elaborate scheme involving arson for insurance fraud committed by the building's owner. The third officer may identify the unattended child and, in an effort to return the child to his or her home, discover that the child has been abandoned days earlier, with nothing to eat, by irresponsible parents. The first officer has discovered evidence of the illicit production of cannabis, the second evidence of arson for fraud, and the third evidence of criminal child neglect. The defendants charged with these respective crimes may eventually challenge the presence of the police in their private premises and the police discovery of evidence of their criminality. Each defendant may claim the evidence of their criminality was seized in violation of their constitutional rights and may challenge the admissibility of such evidence in their respective prosecutions. Police may counter that they were properly responding to an emergency when they inadvertently discovered evidence of a crime. This Article will examine this type of police activity, evidence of criminality seized as a result, and defense challenges of the evidence based on Fourth Amendment grounds.[1]

B. IMPORTANCE OF PROBABLE CAUSE AND THE WARRANT REQUIREMENT

The United States Supreme Court has held that normally, a police seizure of either evidence of a crime in a constitutionally protected area or a possible criminal defendant must be based

[1] This article will *not* explore the extent to which emergency circumstances justify certain police action challenged on grounds other than the Fourth Amendment. *See, e.g.*, Benson v. State, 698 So.2d 333 (Fla. Dist. Ct. App. 1997) (police not required to administer *Miranda* warnings before asking in-custody suspect questions about controlled substance he swallowed upon police approach since questions were aimed at addressing a possible life-threatening emergency); State v. Bernier, 700 A.2d 680 (Conn. App. Ct. 1997) (state fire marshall's analysis of evidence of arson, earlier removed from defendant's home, after exigency of fire had passed, violative of Connecticut's state Constitution.)

on probable cause.[2] Furthermore, the Court has repeatedly stated that a government search or seizure on private premises without a warrant is presumptively unreasonable[3] under the Fourth Amendment[4] unless it falls within one of the "carefully delineated"[5] exceptions to the Fourth Amendment warrant clause.[6] Strong policy interests in preventing possible abuse by government agents support the Court's insistence that government searches and seizures be preceded by the judicial scrutiny needed to procure a warrant. As the Supreme Court has stated,

> The purpose of a warrant is to allow a neutral judicial officer to assess whether the police have probable cause to make an arrest or conduct a search.
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> As we have often explained, the placement of this checkpoint between the Government and the citizen implicitly acknowledges that an "'officer engaged in the often competitive enterprise of ferreting out crime' . . . may lack sufficient objectivity to weigh correctly the strength of the evidence supporting the contemplated action against the individual's interests in protecting his own liberty and the privacy of his home."[7]

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[2] *See, e.g.*, Illinois v. Gates, 462 U.S. 213 (1983) (probable cause determination involves examination of "totality of circumstances"—including veracity of informant, basis of knowledge, and corroborative information—sufficient to establish a "fair probability" that evidence of a crime is in a particular location; probable cause is necessary for issuance of a search warrant); Whitely v. Warden, 401 U.S. 560 (1971) (probable cause necessary for issuance of arrest warrant); Berger v. New York, 388 U.S. 41 (1967) (probable cause necessary for court authorized electronic eavesdropping of conversations); Camara v. Municipal Court, 387 U.S. 523 (1967) (probable cause necessary for issuance of administrative warrant authorizing administrative inspection of residence). United States v. Watson, 423 U.S. 411 (1967) (arrest in public requires probable cause although not a warrant); Carroll v. United States, 267 U.S. 132 (1925) (search of automobile requires probable cause although not a warrant).

[3] Payton v. New York, 445 U.S. 573, 586 (1980); Coolidge v. New Hampshire, 403 U.S. 443, 474-75 (1971) (plurality).

[4] U.S. CONST. amend. IV.

[5] Welsh v. Wisconsin, 466 U.S. 740, 749-50 (1984) (quoting United States v. United States District Court, 407 U.S. 297, 318 (1972) ("Prior decisions of this Court . . . have emphasized that exceptions to the warrant requirement are 'few in number and carefully delineated' . . . and that the police bear a heavy burden when attempting to demonstrate an urgent need that might justify warrantless searches and arrests.")).

[6] *See infra* notes 12-22 and accompanying text.

[7] Steagald v. United States, 451 U.S. 204, 212 (1981) (citing Johnson v. United States, 333 U.S. 10, 14 (1948)).

The United States Supreme Court has expressed a "preference" that searches and seizures be supported by a judicial warrant based on probable cause[8] and have held unconstitutional a variety of searches that were not supported by a warrant.[9] On the other hand, the Court has approved a substantial number of searches on less than probable cause; namely, some on the basis of a reasonable suspicion[10] and others on no individualized suspicion whatsoever.[11] In addition, the Court has recognized a number of exceptions to the warrant requirement,[12] namely,

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[8] United States v. Ventresca, 380 U.S. 102, 105 (1965) (deliberate determinations of magistrates empowered to issue warrants are to be preferred over the hurried action of law enforcement officers acting without warrants).

[9] *Steagald*, 451 U.S. at 204 (search of home for arrestee named in search warrant unconstitutional since home belonged to third party and police had no search warrant authorizing search of latter person's home); United States v. Chadwick, 433 U.S. 1 (1977) (warrantless search of foot locker which had been seized from drug courier but which was in officer's exclusive control when opened unconstitutional); Vale v. Louisiana, 399 U.S. 30 (1970) (search of home for illicit drugs unconstitutional since no search warrant); Chimel v. California, 395 U.S. 752 (1969) (search of defendant's entire home following defendant's arrest unconstitutional since no search warrant and because search outside scope of "search incident to arrest" doctrine); Camara v. Municipal Court, 387 U.S. 523 (1967) (administrative search of home by municipal building inspector unconstitutional in absence of administrative search warrant); See v. City of Seattle, 387 U.S. 541 (1967) (administrative search of locked commercial warehouse by fire department inspector unconstitutional in absence of administrative search warrant); Katz v. United States, 389 U.S. 347 (1967) (warrantless monitoring of private conversations in public telephone booth, which implicated defendant in illegal gambling, unconstitutional); Stoner v. California, 376 U.S. 483 (1964) (search of defendant's hotel room for evidence of armed robbery unconstitutional since no search warrant and because hotel clerk had no authority to consent to search).

[10] *See, e.g.*, Griffin v. Wisconsin, 483 U.S. 868 (1987) (warrantless search of probationer's house by probation officer on basis of "reasonable grounds" upheld); O'Connor v. Ortega, 480 U.S. 709 (1987) (public employer's work-related search of public employee's workplace could be carried out on an individualized suspicion rather than probable cause); New Jersey v. T.L.O. 469 U.S. 325 (1985) (search of high school student's purse on basis of reasonable suspicion upheld); Delaware v. Prouse, 440 U.S. 648 (1979) (ordinary stop of motor vehicle on public thoroughfare requires reasonable and articulable suspicion); Terry v. Ohio, 392 U.S. 1 (1968) (investigatory stop and frisk of suspect for weaponry on basis of reasonable suspicion upheld).

[11] Vernonia School District v. Acton, 515 U.S. 646 (1995) (warrantless, suspicionless drug testing of public school athletes upheld); Michigan Department of State Police v. Sitz, 496 U.S. 444 (1990) (suspicionless roadblock stops of automobiles to snare drunk drivers upheld).

[12] Justice Scalia stated in a concurring opinion that one commentator catalogued nearly twenty exceptions, "including searches incident to arrest, automobile searches, border searches, administrative searches of regulated businesses, exigent circumstances, search[es] incident to nonarrest when there is probable cause to arrest, boat

exigent circumstances,[13] hot pursuit,[14] searches incident to an arrest,[15] seizures of items in plain view,[16] searches of vehicles,[17] inventory searches,[18] consent searches,[19] border searches,[20] searches on the high seas,[21] and searches of heavily regulated businesses to assure compliance with government regulations that are designed to protect the public's health and safety.[22] Finally, the Court has ruled that when police are engaged in "community caretaking functions, totally divorced from the detection, investigation or acquisition of evidence relating to the violation of a criminal statute,"[23] the normal probable cause standard and warrant requirement need not be satisfied before their caretaking functions commence.[24] Examples of community caretaking functions include examining an automobile that was disabled or in an accident,[25] and inventorying an impounded car for safekeeping purposes.[26] This article will explore the community caretaking doctrine and propose that the

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boarding for document checks, welfare searches, inventory searches, airport searches, and school searches." *See* California v. Acevedo, 500 U.S. 565, 582-83 (1991) (Scalia, J., concurring) (citing Craig M. Bradley, *Two Models of the Fourth Amendment*, 83 MICH. L. REV. 1468, 1473-74 (1985)). Scalia indicated since Bradley published his article, the Court had approved two more exceptions: searches of mobile homes and searches of government employees. *Id.*

[13] *See, e.g.*, Schmerber v. California, 384 U.S. 757 (1966) (not practical to procure warrant to remove blood from a drunk driver given inevitable dissipation of driver's blood alcohol level).

[14] *See, e.g.*, United States v. Santana, 427 U.S. 38 (1976); Warden v. Hayden, 387 U.S. 294 (1967).

[15] *See, e.g.*, New York v. Belton, 453 U.S. 454 (1981); United States v. Robinson, 414 U.S. 218 (1973).

[16] *See, e.g.*, Horton v. California, 496 U.S. 128 (1990).

[17] *See, e.g., Acevedo*, 500 U.S. at 565; California v. Carney, 471 U.S. 386 (1987).

[18] *See, e.g.*, Colorado v. Bertine, 479 U.S. 367 (1987); South Dakota v. Opperman, 428 U.S. 364 (1976).

[19] *See, e.g.*, Illinois v. Rodriguez, 497 U.S. 177 (1990); Schneckloth v. Bustamonte, 412 U.S. 218 (1973).

[20] United States v. Montoya de Hernandez, 473 U.S. 531 (1985); United States v. Ramsey, 431 U.S. 606 (1977).

[21] United States v. Villamonte-Marquez, 462 U.S. 579 (1983).

[22] New York v. Burger, 482 U.S. 691 (1987).

[23] Cady v. Dombrowski, 413 U.S. 433, 441 (1973).

[24] South Dakota v. Opperman, 428 U.S. 364, 371-76 (1976).

[25] *Cady*, 413 U.S. at 441.

[26] Colorado v. Bertine, 479 U.S. 367, 371 (1987).

doctrine provides the analytical framework for evaluating searches and seizures incident to an emergency. This article proposes that when police officers act in response to an emergency, or in their community caretaking capacity, probable cause is not relevant and a judicial warrant is not needed. In other words, government actions carried out in response to an emergency should be viewed as an exception to normal Fourth Amendment standards because these actions are not considered a search or seizure as contemplated by the Fourth Amendment.

The United States Supreme Court has alluded to another possible doctrine or exception to the general rule that law enforcement authority's actions must be predicated on probable cause and a warrant, namely, an "emergency,"[27] without necessarily describing it as such.[28] However, the Court and the legal literature[29] have paid scant attention to the growing willingness of the nation's lower courts to recognize this doctrine or exception. The purpose of this article is two-fold. First, it explores a substantial body of caselaw that has addressed governmental claims that law enforcement actions were justified by what could simply be described as an emergency. This review will reveal, not only differences between jurisdictions as to what type of circumstances are properly classified as emergencies permitting, for instance, a warrantless entry into a residence, but will also reveal rather dramatic differences in the method of analysis which the judiciary utilized in assessing the constitutionality of these types of governmental actions in the face of a Fourth

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[27] *See, e.g.,* Camara v. Municipal Court, 387 U.S. 523, 539 (1967) (plurality opinion) ("[N]othing we say today is intended to foreclose prompt inspections, even when without a warrant, that the law has traditionally upheld in *emergency* situations.") (emphasis added); *See also Cady,* 413 U.S. at 447-48 ("[C]oncern for the safety of the general public who might be endangered if an intruder removed a revolver from the trunk of . . . [an impounded] vehicle . . . was not unreasonable solely because a warrant had not been obtained.").

[28] *See, e.g.,* Michigan v. Tyler, 436 U.S. 499, 509 (1978) ("A burning building clearly presents an exigency of sufficient proportions to render a warrantless entry 'reasonable.'").

[29] *See* Ronald J. Bacigal, *The Emergency Exception to the Fourth Amendment,* 9 U. RICH. L. REV. 249 (1975); Edward G. Mascolo, *The Emergency Doctrine Exception to the Warrant Requirement Under the Fourth Amendment,* 22 BUFF. L. REV. 419 (1972); Note, *The Emergency Doctrine, Civil Search and Seizure, and the Fourth Amendment,* 43 FORDHAM L. REV. 571 (1975).

Amendment challenge. As to the former, the case law reveals surprisingly little insight into such basic questions as whether an emergency requires a threat to life or limb or whether a mere threat to property interests is sufficient. As to the latter point, some courts rely on a simple, if not simplistic, "reasonableness" analysis which only inquires as to whether the governmental action was appropriate given the surrounding circumstances,[30] while others employ a more sophisticated multi-factor test for determining the validity of an emergency claim.[31]

The second, and more important, goal of this article is to offer a doctrinal model that will assist courts in determining whether an emergency existed sufficient to validate a law enforcement agent's actions that now are being questioned. Initially, it will note the United States Supreme Court's recognition of the "community caretaking" role of the police that is, on the one hand, an essential characteristic of *police* work and, on the other hand, the type of activity that should not be saddled with the *criminal procedure* requirements that police must satisfy when they are investigating a crime and gathering evidence. Further, it will argue this "community caretaking" concern of police provides a principled framework for validating police action carried out in the name of an emergency. Next, a three-prong test will be used to guide courts through the thorny questions of when certain questionable police actions qualify as justifiable emergency actions. Specifically, the first prong of this three-part test requires that there must be an objectively reasonable basis for a belief in the immediate need for police assistance for the protection of human life or substantial property interests. The second prong of this test insists that the officer's actions must be

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[30] *See, e.g.*, State v. Brimage, 918 S.W.2d 466, 501 (Tex. Crim. App. 1996) ("We have used an objective standard of reasonableness in determining whether a warrantless search is justified under the emergency doctrine. This objective standard of reasonableness used in evaluating the police's conduct takes into account the facts and circumstances known to the police at the time of the search.").

[31] *See, e.g.*, People v. Mitchell, 347 N.E.2d 607 (N.Y. 1976) (guidelines for emergency doctrine are: (1) police must have reasonable grounds to believe 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 an intent to arrest and seize evidence; and (3) there must be some basis to associate the area or place where the emergency occurred with the responsive police action).

motivated by an intent to aid or protect, rather than to solve a crime. The third prong demands that the police action in question fall within the scope of the emergency.

The review of existing caselaw and the three-prong test, which this article argues should be uniformly employed in evaluating government actions claimed to be justified because of emergency considerations, will be presented simultaneously throughout the article. This approach is better suited to identifying the contrasts between some courts' resolution of emergency claims and the three-part test supported by this author than would a mere descriptive survey of the various opinions thereafter followed by this author's set of recommendations. It is the hope of the author that, in the end, this article will clarify one aspect of the very complicated puzzle referred to as Fourth Amendment jurisprudence.

C. "EMERGENCY" VERSUS "EXIGENT CIRCUMSTANCES": A QUESTION OF NOMENCLATURE

It is important to note that various courts have characterized as an "exigency" or the "exigent circumstances" concept what this article will, for the sake of clarity, refer to as an "emergency," the "emergency doctrine," or the "emergency exception" to the warrant requirement.[32] Some decisions refer to the so-called "exigent circumstances" exception to the warrant clause as a general exception, which encompasses a variety of

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[32] *See, e.g.*, Michigan v. Clifford, 464 U.S. 287, 293 (1984) (plurality opinion) ("A burning building of course creates an exigency that justifies a warrantless entry by fire officials to fight the blaze."); Michigan v. Tyler, 436 U.S. 499, 509 (1978) ("A burning building clearly presents an exigency of sufficient proportions to render a warrantless entry 'reasonable.'").

The United States Supreme Court not only has described police actions that have little or nothing to do with their law enforcement functions as an "exigency" that excuses the Fourth Amendment warrant requirement, but also have referred to police collection of evidence of a crime, in one case where there existed insufficient time to procure a warrant, as an "emergency" that justified warrantless police action. Schmerber v. California, 384 U.S. 757, 770 (1966) (police officer who took drunk driving arrestee to hospital for immediate removal of blood "was confronted with an emergency, in which the delay to obtain a warrant, under the circumstances, threatened the destruction of [high blood-alcohol] evidence").

other warrant exceptions, such as the automobile exception.[33] This school of thought would view an emergency situation as a category or variant of exigent circumstances.[34] For example, in *United States v. Johnson*,[35] the United States Court of Appeals for the Sixth Circuit described a burglary in progress[36] as a situation where "exigent circumstances" existed which validated federal agents' warrantless entry into private premises and their observation of what appeared to be bomb-making materials therein.[37] There, the court found that the police entry and protective sweep of the premises for burglars "was warranted in order to ensure the security of the owner's property."[38] Similarly, in *People v. Higbee*,[39] the Supreme Court of Colorado indicated that the presence of explosive devices[40] gave rise to what it deemed "exigent circumstances," which authorized municipal police entry and search of an apartment for such devices given the "threat of life or safety posed by the alleged explosive device."[41] Meanwhile, in *United States v. Warner*,[42] the United States Court of Appeals for the Ninth Circuit ruled that the presence of certain inherently volatile chemicals[43] in a private garage did not create

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[33] *See, e.g.*, California v. Acevedo, 500 U.S. 565, 569 (1991)(quoting Carroll v. United States, 267 U.S. 132, 158-59 (1925))("[Carroll] held that a warrantless search of an automobile based upon probable cause to believe that the vehicle contained evidence of a crime in the light of an exigency arising out of the likely disappearance of the vehicle did not contravene the Warrant Clause of the Fourth Amendment.").

[34] *See, e.g.*, People v. Malczewski, 744 P.2d 62, 66 (Colo. 1987)("[T]he emergency variant of the exigent circumstances exception requires a showing of an immediate crisis inside the [place to be searched] and the probability that police assistance will be helpful in alleviating that crisis.").

[35] 9 F.3d 506 (6th Cir. 1993).

[36] *See infra* Part III.A.2.i for discussion of case law which views a burglary in progress as a situation where police can conduct a warrantless entry into premises.

[37] *Johnson*, 9 F.3d at 511.

[38] *Id.* at 510.

[39] 802 P.2d 1085 (Colo. 1990).

[40] *See infra* Part III.A.2.k for discussion of case law which views the presence of explosive devices as a situation where police can conduct a warrantless entry into premises.

[41] *Higbee*, 802 P.2d at 1090.

[42] 843 F.2d 401 (9th Cir. 1988).

[43] *See infra* Part III.A.2.l for discussion of case law which views the presence of ether or other volatile chemicals as a situation where police can conduct a warrantless entry into premises.

"exigent circumstances" permitting police entry into the premises to "protect or preserve life or avoid serious injury" when the officer knew the chemicals in question had been present in the garage in the summer heat for the past two weeks without incident.[44] Thus, the officer's seizure of various materials used by the defendant in the manufacture of controlled substances within his garage violated the Fourth Amendment.[45] Likewise, in *Parkhurst v. Trapp*,[46] the United States Court of Appeals for the Third Circuit held that where police entered a home a second time following an earlier report of a kidnapping,[47] their warrantless entry was not justified by "exigent circumstances" because (1) the alleged victim of the kidnapping was a child whose father, the alleged kidnapper, had court-ordered joint custody of the child, (2) the police had entered the father's home a first time, arrested him for a violation of the court order, and taken him into custody where he remained when they entered his home a second time, and (3) during the first entry the police did not find the child, but instead found a note which indicated the father's mother (or child's grandmother) had taken the child to another location.[48] Here, no basis existed for believing the child was placed in "imminent danger" by anyone, especially the incarcerated father; thus, the second entry into the father's residence was unconstitutional.[49]

Notwithstanding the broad definition of "exigent circumstances" utilized in some of the cases discussed immediately above, this article will follow the approach taken in numerous other cases, where the court refers to an immediate threat to a person or substantial property interest as an "emergency." Accordingly, further discussion of the subject that is the focus of this article will make reference to the "emergency doctrine" or the "emergency exception" to the Fourth Amendment warrant

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[44] *Warner*, 843 F.2d at 404.

[45] *Id.*

[46] 77 F.3d 707 (3rd Cir. 1996).

[47] *See infra* Part III.A.2.c for discussion of case law which views a kidnapping as a situation where police can conduct a warrantless entry into premises.

[48] *Parkhurst*, 77 F.3d at 711-12.

[49] *Id.* at 712. This case was a civil action under 42 U.S.C. § 1983 by the father against the police.

clause. "Exigent circumstances" will be understood to cover only those situations where the police take warrantless action due to their reasonable belief that there exists a serious potential for the destruction of evidence of a crime should they take the time to procure a warrant.[50] An "emergency" will refer to those situations where police act to aid or protect human life or to protect substantial property interests as *part* of their "community caretaking" function.[51] Parenthetically, others might describe these situations as a "civil emergency" or the general concept discussed in this article as the "civil emergency" doctrine.[52] This, too, is simplistic because a police response to an assault in progress or a burglary in progress is *not* merely a civil matter.

In addition, the position I propose, which refuses to view most or all of the various warrant exceptions as a sub-category of exigent circumstances, is in accord with several United States Supreme Court decisions. For example, in *United States v. Ramsey*,[53] the Court ruled that the "border search" exception was not based on the doctrine of "exigent circumstances" but rather is a long-standing, historically recognized exception to the Fourth

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[50] *See, e.g.*, Schmerber v. California, 384 U.S. 757 (1966) (warrantless removal of blood from defendant suspected of drunk driving valid where there existed probable cause to believe defendant's blood-alcohol level exceeded the legal limit and procurement of warrant would have resulted in dissipation of the blood-alcohol evidence); Ker v. California, 374 U.S. 23 (1963) (unannounced and warrantless entry of premises by police to seize marijuana permissible given the need to prevent destruction of the contraband).

[51] Virginia's Court of Appeals has acknowledged "that in the context of a warrantless entry and search, little, if any, distinction exists in Virginia law between the circumstances governing the application of the community caretaking doctrine and those governing the application of the 'emergency' exception to the warrant requirement." Wood v. Commonwealth, 484 S.E.2d. 627, 630 (Va. Ct. App. 1997).

However, this article views the community caretaking concept as a broader concept, encompassing concerns such as inventories, which do not involve the immediacy aspect of an emergency. In other words, both the community caretaking and emergency doctrines have in common the government interest in protecting life or property. On the other hand, community caretaking does not carry the degree of urgency normally associated with an emergency. Thus, a police officer will not normally be required to interrupt a coffee-break to perform an automobile inventory but will most likely be required to do so to respond to a person in need of medical treatment.

[52] JAMES B. HADDAD ET AL., CRIMINAL PROCEDURE 432-33 (4th ed. 1992).

[53] 431 U.S. 606 (1977).

Amendment's general principal that warrants are required for searches and seizures.[54] So too, in *United States v. Santana*,[55] the Court noted a difference between the "exigency" exception and the "hot pursuit" exception. The latter, as opposed to the former, invariably involves "some element of [police] chase" of an arrestee who is attempting to elude the police by entering an otherwise constitutionally protected area, such as a home.[56] This article proposes that when police act in response to an emergency, this action is within their community caretaking function, and is not a variant of exigent circumstances, but, like a border search or hot pursuit, is a separate exception to the Fourth Amendment.

II. THE DUAL ROLES OF AMERICAN LAW ENFORCEMENT

A. THE DISTINCTION BETWEEN LAW ENFORCEMENT AND COMMUNITY CARETAKING FUNCTIONS.

Law enforcement officers generally act pursuant to either law enforcement or community caretaking objectives. The difference between the two stems from the officers' underlying motives. The law enforcement function includes conduct that is designed to detect or solve a specific crime, such as making arrests, interrogating suspects, and searching for evidence. Community caretaking, on the other hand, is based on a service notion that police serve to ensure the safety and welfare of the citizenry at large.[57] For example, this may involve approaching a

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[54] *Id.* at 618.

[55] 427 U.S. 38 (1976).

[56] *Id.* at 43 n.3.

[57] The Virginia Court of Appeals has offered an analytical framework for assessing whether police conduct fits the mold of community caretaking:

> "The appropriateness of applying the community caretaking doctrine to a given factual scenario is determined by whether: (1) the officer's initial contact or investigation is reasonable; (2) the intrusion is limited; and (3) the officer is not investigating criminal conduct under the pretext of exercising his community caretaking function." Police officers have an obligation to aid citizens who are ill or in distress, as well as a duty to protect the citizens from criminal activity.
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> The two functions are unrelated but not exclusive to one another. "Objective reasonableness remains the linchpin of determining the validity" of action taken under the community caretaker doctrine.

seemingly stranded motorist or lost child to inquire whether he or she needs assistance, assisting persons involved in a natural disaster, or warning members of a community about a hazardous materials leak in the area.

In *People v. Murray*[58] the Illinois Supreme Court noted three tiers of police-citizen encounters, two of which are in the nature of law enforcement and one of which is in the nature of community caretaking.[59] On the law enforcement side, the court included the traditional arrest, which must be supported by probable cause[60] and the so-called "*Terry* stop," a brief seizure that must be supported by a reasonable suspicion of criminal activity.[61] On the community caretaking side, the court included actions where "local police officers . . . frequently investigate vehicle accidents in which there is no claim of criminal liability" and engage in functions "total divorced" from possible criminality.[62]

When an officer is pursuing a community caretaking function that in no way involves a "seizure" of a person, no "particularized and objective justification" for his actions is required.[63] In other words, the traditional constitutional requirements involving a warrant, probable cause, and the like have no operable effect in this form of police-citizen encounter.[64] Thus, in *Murray*, where police approached a defendant who was sleeping in his vehicle parked on the side of the road, woke the defendant by tapping on the window and asked him to exit the vehicle to determine if defendant was in distress, the court concluded this police activity was justified by the officer's community caretaking function, inasmuch as the defendant, at the

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Wood v. Commonwealth, 484 S.E.2d 627, 630 (Va. Ct. App. 1997) (quoting Commonwealth v. Waters, 4567 S.E.2d 527, 530 (Va. 1995)).

[58] 560 N.E.2d 309 (Ill. 1990).

[59] *Id.* at 311 (citing United States v. Berry, 670 F.2d 583, 591 (5th Cir. 1982)).

[60] *Id.* (citing Henry v. United States, 361 U.S. 98 (1959)).

[61] *Id.* (citing Terry v. Ohio, 392 U.S. 1 (1968)).

[62] *Id.* at 312 (quoting Cady v. Dombrowski, 413 U.S. 433, 441 (1973)).

[63] *Id.* (quoting United States v. Mendenhall, 446 U.S. 544-45 (1980)) ("[A]s long as the person . . . remains free . . . to walk away, there has been no intrusion upon that person's liberty or privacy as would under the Constitution require some particularized and objective justification.").

[64] South Dakota v. Opperman, 428 U.S. 364, 370 n. 5 (1976).

point of his exit, was free to decline the officer's request.[65] Here, a gun observed on the floor of defendant's vehicle was *not* discovered during the course of a "seizure" of defendant's person.[66] Rather, the police had noticed the gun in plain view while exercising their "community caretaking" obligations.[67]

While community caretaking seems virtually limitless in application,[68] at least two specific applications of this concept have strong support in the caselaw; namely, police actions that are

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[65] *Murray*, 560 N.E.2d at 314.

[66] *Id.*

[67] *Id.*

[68] *See, e.g.* United States v. York, 895 F.2d 1026 (5th Cir. 1990) (community caretaking concept legitimized police accompanying invitee into defendant's home while invitee attempted to peacefully remove his family and personal belongings following defendant's earlier threats, while intoxicated, directed at invitee's family; deputy sheriff's observations of illegal firearms in plain view upheld); People v. Crocker, 641 N.E.2d. 1237 (Ill. App. Ct. 1994) (conduct of officer in exiting his car, approaching defendant walking away from vehicle and asking him if he needed a ride, whereupon officer observed evidence of defendant's driving while intoxicated, was within officer's "community caretaking functions" and not a search or seizure governed by the Fourth Amendment); People v. Todd, 619 N.E.2d. 1353 (Ill. App. Ct. 1993) (conduct of officer in approaching defendant sitting in parked car in public parking lot with eyes closed, and officer unable to tell if defendant was sleeping, unconscious, or dead, whereupon officer observed evidence of residential burglary on floorboard of car, was within officer's "community caretaking" function); People v. Carlile, 600 N.E.2d 916 (Ill. App. Ct. 1992) (conduct of officer in entering defendant's house at defendant's request to attempt to get defendant's former girlfriend to peacefully leave defendant's house, whereupon officer encountered evidence of defendant's illicit drug activity, was within officer's "community caretaking functions"); People v. Quigley, 589 N.E.2d 133 (Ill. App. Ct. 1992) (conduct of officer in stopping motorist to inquire as to cause of heated argument between motorist and another driver at stop sign, whereupon officer observed evidence of defendant's driving while intoxicated, was within officer's "community caretaking functions"); State v. Washington, 687 A.2d 343 (N.J. Super. Ct. App. Div. 1997) (community caretaking doctrine permitted police stop of vehicle that was weaving and driving under speed limit since it posed a potential safety hazard to other vehicles; subsequent discovery of evidence of driving while intoxicated upheld); Wood v. Commonwealth, 484 S.E.2d. 627 (Va. Ct. App. 1997) (community caretaking doctrine authorized police officers who had just arrested defendant for beating his wife to conduct a warrantless search of defendant's home for a teenage stepchild that the defendant had recently reported missing; resultant discovery of illegal drugs and firearms in plain view upheld); Commonwealth v. Waters, 456 S.E.2d 527 (Va. Ct. App. 1995) (police officer's initial stop of defendant was reasonable exercise of officer's community caretaking function where officer observed defendant swaying and walking unsteadily, which officer interpreted to be a result of intoxication, illness or person otherwise in need of help; officer's subsequent discovery and retrieval of weapon from defendant's person arising out of initial stop upheld).

being carried out in the furtherance of a property "inventory"[69] and those which are addressing an emergency.[70] The situation where the United States Supreme Court first described the community caretaking function was in connection with police inventories of private property and, accordingly, exploration of this concept will begin with a review of this caselaw.

B. APPLICATIONS OF THE COMMUNITY CARETAKING CONCEPT

1. Inventory

In *Cady v. Dombrowski*,[71] decided by the United States Supreme Court in 1973, a defendant's automobile was disabled as a result of an accident along a highway. Since the vehicle constituted a nuisance and the defendant, being intoxicated and later comatose, could not make arrangements to have the vehicle removed, the police had the vehicle towed to a private garage.[72] Inasmuch as the police realized the defendant was a Chicago police officer, thought that Chicago police officers were required to carry their service revolvers at all times, and did not find a gun on defendant's person, a police officer took action designed to retrieve the gun from the defendant's automobile because of his "concern for the safety of the general public who might be endangered if an intruder removed a revolver from the trunk of the vehicle."[73] During this police action, which was described as "standard procedure" in the department, the officer discovered evidence of defendant's involvement in a murder that had occurred in the area.[74] Here, the Court noted the officer's discovery of the evidence occurred during a "caretaking" effort, a conclusion that was reinforced by the fact that the officer was ignorant of the occurrence of the

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[69] *See infra* Part II.B.1 for a discussion of United States Supreme Court decisions involving the "inventory" doctrine.

[70] *See infra* Part II.B.2 for a discussion of United States Supreme Court decisions that have discussed an emergency.

[71] 413 U.S. 433 (1973).

[72] *Id.* at 435-36.

[73] *Id.* at 447.

[74] *Id.* at 437.

murder at the time of his discovery of the evidence.[75] Since the officer reasonably believed the automobile contained a gun that was "vulnerable to intrusion by vandals," this search was reasonable under the Fourth Amendment.[76]

In 1976, the Court, in *South Dakota v. Opperman*,[77] held a routine inventory of a defendant's locked automobile, which had been lawfully impounded for multiple violations of municipal parking ordinances, was reasonable under the Fourth Amendment.[78] The Court noted three important policy interests justified routine inventories of impounded vehicles: (1) safeguarding an owner's property, (2) shielding authorities from accusations of theft, and (3) protecting against dangerous instrumentalities that might be in the vehicle.[79] In addition, there was "no suggestion whatever that this standard procedure, essentially like that followed throughout the country, was a pretext concealing an investigatory police motive."[80] Here, then, the inadvertent discovery of marijuana during the inventory did not violate the Fourth Amendment.[81] The fact that the police did not have probable cause or a warrant was irrelevant given the "noncriminal context of inventory searches."[82]

In 1987, in *Colorado v. Bertine*,[83] police arrested defendant for driving his van under the influence of alcohol, inventoried the vehicle and various containers therein and found evidence of illicit drug activity within the containers.[84] Since there was "no showing that the police, who were following standardized procedures, acted in bad faith or for the sole purpose of investigation" of possible criminality, the police action was deemed reasonable.[85] The fact that the police did not pursue "less intru-

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[75] *Id.* at 447-48.
[76] *Id.* at 448.
[77] 428 U.S. 364 (1976).
[78] *Id.* at 376.
[79] *Id.* at 369.
[80] *Id.* at 376.
[81] *Id.*
[82] *Id.* at 370 n.5.
[83] 479 U.S. 367 (1987).
[84] *Id.* at 368-69.
[85] *Id.* at 372.

sive" means, such as providing defendant with the opportunity to make other arrangements for the safekeeping of his property, did not undermine the validity of the inventory.[86] *Bertine* is instructive for two reasons. First, an inventory of a closed container is permissible in this context. In other situations, the court has described a closed container as a "repository of personal effects," which police may not normally search without a warrant.[87] The second, and more important, reason that *Bertine* is instructive is because it illustrates the community caretaking concept generally. This concept is revealed in the "sole purpose" language quoted above which clearly implies that police might simultaneously pursue both a law enforcement goal *and* a community caretaking objective. In other words, only where the police purpose or motive is a singular law enforcement one, do the usual Fourth Amendment commands regarding warrants and probable cause apply.

In *Florida v. Wells*,[88] the United States Supreme Court held that "standardized criteria" or "established routine" must govern opening closed containers during the course of an automobile inventory.[89] Here, the unfettered discretion of the officer in regards to carrying out an inventory carried the potential of being turned into "a ruse for a general rummaging in order to discover incriminating evidence" of a crime, and, thus, was unconstitutional.[90]

Finally, in *Illinois v. LaFayette*,[91] the Supreme Court ruled an inventory of an arrestee's personal effects during the course of a police "booking" was permissible under the Fourth Amendment.[92] Although the Court did not refer to the "community caretaking" concept directly, they adopted the policy concerns

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[86] *Id.* at 373-74.

[87] *See* Arkansas v. Sanders, 442 U.S. 753, 766 (1979) and United States v. Chadwick, 433 U.S. 1, 15 (1977), holding that searches of closed trunks and suitcases for evidence of criminality must be carried out pursuant to a search warrant based on probable cause since these items are normally repositories of personal effects.

[88] 495 U.S. 1 (1990).

[89] *Id.* at 3-4.

[90] *Id.* at 4.

[91] 462 U.S. 640 (1983).

[92] *Id.* at 645.

enunciated in *Opperman*—safekeeping an owner's property, avoiding police liability, and protecting against dangerous instrumentalities–as justifications for the police activity at issue.[93] Thus, the discovery of a controlled substance in the defendant's shoulder bag during the booking inventory was ruled constitutional.[94] As with those inventory decisions where the Court explicitly validates challenged police activity on a caretaking rationale, it is the supposed benevolence of the police, at least in part, that caused the court to give its blessing to a police inventory in the booking context as well.

2. Emergency

Although the United States Supreme Court has never expressly stated that a police officer's "community caretaking" functions include addressing "emergency" situations, it has commented in several cases—albeit most often in dicta—that police responsibilities include addressing circumstances beyond criminal investigation and detection where personal safety or a substantial property interest might by threatened by imminent danger. For example, in *Camara v. Municipal Court of San Francisco*,[95] the Court held that an administrative inspection of a private dwelling, in circumstances where a municipal inspector had time to procure a search warrant, violated the Fourth Amendment.[96] The Court, however, added "nothing we say today is intended to foreclose prompt inspections, even without a warrant, that the law has traditionally upheld in emergency situations."[97] In *Camara*, the Court's examples of possible emergencies requiring immediate government response included exposure of the public to unwholesome food, smallpox, and tubercular cattle.[98]

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[93] *Id.* at 646-47.

[94] *Id.* at 643.

[95] 387 U.S. 523 (1967).

[96] *Id.* at 540.

[97] *Id.* at 539 (citing North American Cold Storage Co. v. City of Chicago, 211 U.S. 306 (1908) (seizure of unwholesome food); Jacobson v. Massachusetts, 197 U.S. 11 (1905) (compulsory smallpox vaccination); Compagnie Francaise de Navigation a Vapeur v. Board of Health of Louisiana, 186 U.S. 380 (1902) (health quarantine); Kroplin v. Truax, 165 N.E. 498 (Ohio 1929) (summary destruction of tubercular cattle)).

[98] *Camara*, 387 U.S. at 539.

In a fashion, *Cady v. Dombrowski*,[99] discussed above, might also be viewed as a decision where the Court approved a police officer's action because of his concern for the general safety of the public.[100] In *Cady*, the Court found it factually significant that the police officer's attempt to retrieve a gun from defendant's disabled automobile was motivated by his intent "to protect the public from the possibility that a revolver would fall into untrained or perhaps malicious hands."[101]

In *Michigan v. Tyler*,[102] the Court approved the action of firefighters who entered a furniture store to put out a fire, and then discovered evidence of arson for insurance fraud purposes within the premises. The Court stated, "[a] burning building clearly presents an exigency of sufficient proportion to render a warrantless entry 'reasonable.' . . . Indeed, it would defy reason to suppose that firemen must secure a warrant or consent before entering a burning structure to put out the blaze."[103] Later, in *Michigan v. Clifford*,[104] another arson-for-fraud case, the Court essentially repeated itself when it said, "[a] burning building of course creates an exigency."[105]

Finally, in *Mincey v. Arizona*,[106] the Court held that Arizona's "murder scene exception" to the Fourth Amendment warrant clause was unconstitutional. The Court reasoned that a homicide scene does not automatically create some type of exigency *per se* permitting an immediate police entry into private premises.[107] Nevertheless, *Mincey* offers additional dictum in support of an emergency doctrine in appropriate circumstances. The Court stated, "[w]e do not question the right of the police to respond to emergency situations. Numerous state and federal

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[99] 413 U.S. 433 (1973).

[100] *Id.* at 447.

[101] *Id.* at 443.

[102] 436 U.S. 499 (1978).

[103] *Id.* at 509.

[104] 464 U.S. 287 (1984).

[105] *Id.* at 293. In *Clifford*, the court held a search for evidence of arson that was delayed until several hours after the fire was extinguished was beyond the scope of the earlier emergency. *Id.* at 298.

[106] 437 U.S. 385 (1978).

[107] *Id.* at 393.

cases recognize 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."[108]

C. ANALYTICAL PROBLEMS IN MUDDLING THE LAW ENFORCEMENT-COMMUNITY CARETAKING DICHOTOMY.

It is not uncommon to encounter decisions that do not reflect a sharp differentiation between the community caretaking and law enforcement roles of the police. The result of the failure to address this dichotomy often leads to two related analytical problems. First, in some instances, it is unclear whether a court opinion is determining the propriety of challenged police action on law enforcement grounds—which necessarily leads to questions about whether the police were involved in a "search," had a reasonable suspicion or probable cause, needed a warrant, or were faced with exigent circumstances—or on the basis of community caretaking functions, which addresses the different question of whether there were significant threats to persons or property interests that required immediate protective police action. For example, in *United States v. Rohrig*,[109] the United States Court of Appeals for the Sixth Circuit analyzed facts arising out of a report of loud music emanating from defendant's home in the middle of the night that was disturbing neighbors, a warrantless police entry to address the problem and a subsequent discovery of marijuana plants in plain view. At the outset of the court's analysis of the Fourth Amendment, the court thoroughly addressed the importance of the warrant requirement,[110] discussed at length the "exigent circumstances" justification for warrantless entries,[111] and carefully explained how the United States Supreme Court in *Welsh v. Wisconsin* [112] had ruled that the "exigent circumstances" exception to the warrant requirement could *not* be invoked by police attempting

[108] *Id.* at 392.
[109] 98 F.3d 1506 (6th Cir. 1996).
[110] *Id.* at 1511-15.
[111] *Id.* at 1515-18.
[112] 466 U.S. 740, 753-54 (1984).

to arrest a person in his residence for a minor offense.[113] In addressing the propriety of police effort to arrest the defendant for a municipal noise ordinance violation punishable by a maximum fine of $100 (a transgression even less serious than driving under the influence of an intoxicant charge that was at issue in *Welsh*), the opinion slides into a discussion of how this "warrantless entry to abate an ongoing nuisance" was designed to "protect the well-being of the immediate community."[114] Opining that the "*Welsh* analysis has less relevance as one moves away from traditional law-enforcement functions and toward . . . 'community caretaking functions,'"[115] that the warrant clause is "implicated *to a lesser degree* when police act in their roles as 'community caretakers,'"[116] and that it is not "tenable" to insist the community caretaker have probable cause before undertaking his or her duties,[117] the Sixth Circuit in its closing paragraph stated "we conclude that the . . . warrantless entry into Defendant's home was justified by *exigent circumstances*, and that the officers' subsequent discovery of marijuana plants . . . was justified under the 'plain view' doctrine."[118] Here, then, this court: (1) implied that warrants may be necessary in some circumstances in the community caretaking context and (2) evidently views community caretaking functions, at least in some cases, as a form of exigent circumstances. It should be noted, however, that the first proposition has no support in any of the United States Supreme Court decisions involving community caretaking. The second creates a subcategory of exigent circumstances that allows a warrantless entry into a dwelling where the police motive is to address a trivial offense, clearly a proposition that is contrary to *Welsh v. Wisconsin.*

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[113] *Rohrig*, 98 F.3d at 1516.

[114] *Id.* at 1520.

[115] *Id.* at 1521.

[116] *Id.* at 1523 (emphasis added).

[117] *Id.*

[118] *Id.* at 1526 (emphasis added). A seizure of evidence that is in plain view is justified if an official observed the evidence from a place where he or she had a right to be, and the incriminating character of the evidence is immediately aparent and within immediate access to the officer. Horton v. California, 496 U.S. 128, 136-37 (1990).

A second problem that appears in opinions which muddle law enforcement and community caretaking functions is that it leads courts to unnecessarily look for probable cause, warrants, or exigent circumstances where a straightforward community caretaking analysis would avoid such hurdles. In *United States v. Johnson*,[119] another opinion by the United States Court of Appeals for the Sixth Circuit, the court justified the actions of officers who entered a residence after receiving a dispatch indicating a burglary in progress using the rubric of probable cause and exigent circumstances.[120] Police were dispatched to the defendant's residence when a neighbor called to report a burglary in progress. The neighbor reported observing people crawl through a window of the defendant's home.[121] When the police arrived, they found the door locked and a window pane broken in the kitchen.[122] No one answered the officers' knocks, but as the police neared the window, they noticed two individuals inside.[123] One woman claimed she lived there, however she had no key, and she could not produce any identification.[124] The police ordered the two individuals to exit the house through the window, and then secured them in the squad car.[125] As the police approached the house a second time, they encountered two more individuals.[126] After all four individuals were placed in the squad car, the police entered the house to determine if anyone else was inside.[127] Once inside, the police saw various items, including gun clips and ammunition, a dynamite fuse, and bomb-making materials.[128] When the defendant came home, he refused to consent to a search, whereupon the police obtained a warrant and conducted a more thorough search of the premises. The defendant was ultimately convicted

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[119] 9 F.3d 506 (6th Cir. 1993).
[120] *Id.* at 509-10.
[121] *Id.* at 507.
[122] *Id.*
[123] *Id.*
[124] *Id.*
[125] *Id.*
[126] *Id.*
[127] *Id.* This was the first time the police actually entered the house. *Id.*
[128] *Id.*

of two offenses as a result of an illegal firearm found during the search.[129]

The Sixth Circuit, which used the terms "emergency" and "exigent" circumstances interchangeably throughout its analysis, upheld the officers' entry. The court held that, based on the neighbor's report, the broken window, and the presence of individuals inside the residence who were acting suspiciously and who failed to supply identification, the officers had probable cause to believe that criminal activity was afoot inside the residence.[130] Further, the court stated that the officers' decision to enter the premises to secure the owner's property and conduct a protective sweep, without first obtaining a warrant, was reasonable since an emergency situation existed.[131]

The Sixth Circuit's analysis is somewhat confusing. As noted above, in *Johnson*, the court approved of the officers' entry because it found that probable cause existed along with emergency and/or exigent circumstances. These are, however, two separate arguments for justifying a warrantless search. As was discussed above,[132] the probable cause and exigent circumstance analysis, as ordinarily applied, focuses exclusively on the officers' law enforcement objective. Thus, relying on a law enforcement analysis compels the court in a case like *Johnson* to find that the officer had probable cause to believe that a burglary was in progress, and that the warrantless entry was justified to prevent the suspected criminals from escaping. On the other hand, the emergency exception is based on the officers' community caretaking functions that, for the moment, may have superseded their law enforcement objectives. Not merely concerned with gathering evidence of a crime, the officer was, in addition, focused on aiding possible crime victims or preventing damage to property, which thereby avoids the necessity of

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[129] *Id.* at 508.

[130] *Id.* at 509. The Sixth Circuit, like most courts, recognizes the emergency exception as falling under the exigent circumstances doctrine. It defines an emergency as any situation where the need for urgent police action excuses the failure to procure a warrant. Further, this court also requires a finding of probable cause, which means a substantial chance that criminal activity exists, before the officers can enter. *Id.*

[131] *Id.* at 510.

[132] *See supra* Part I.C.

needing probable cause to arrest or search, or obtaining search or arrest warrants.[133] Therefore, community caretaking analysis offers a more appropriate doctrinal framework to use when confronted with such a situation.[134] In other words, the emergency exception provides a more convenient second avenue, separate from exigent circumstances, for justifying a warrantless entry in a case such as *Johnson*, although both theories, law enforcement and community caretaking, may lead to a similar result.

III. THE EMERGENCY DOCTRINE

A. PRONG ONE: THERE MUST EXIST AN OBJECTIVELY REASONABLE BASIS FOR A BELIEF IN AN IMMEDIATE NEED FOR POLICE ASSISTANCE FOR THE PROTECTION OF LIFE OR SUBSTANTIAL PROPERTY INTERESTS.

The first condition that must appear before police can take action under the authority of the emergency doctrine is the presence of a true emergency situation. For the purposes of this article, I define an emergency as a situation where a police officer has an objectively reasonable basis for a belief that there is an immediate need for police assistance for the protection of human life or property.[135] No actual emergency need be present in order to satisfy the doctrine.

1. Objectively Reasonable Standard

The determination of whether an emergency situation exists should be made consistent with an objective standard. The court must determine if, under the known circumstances at the

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[133] As one examines the arguments made and the facts presented to a court in a burglary-in-progress case, it seems that the police are generally focused on stopping a crime in progress, and capturing the burglar, more so than providing immediate relief to a person or property interests. However, where the police respond to a reported burglary in progress and hear screams as they approach a residence, the claim of an emergency may provide a more logical argument than focusing on detection of criminality. *See infra* Part III.B for a discussion of the importance of the officer's motive.

[134] *See supra* Part II.A for a discussion of the community caretaking doctrine.

[135] *Cf.* United States v. Bute, 43 F.3d 531, 540 (10th Cir. 1994) ("[A] warrantless entry only is permitted under the Fourth Amendment when the officer has an objectively reasonable belief that an emergency exists requiring immediate entry to render assistance or prevent harm to persons or property within.").

time, the acting police officer could have *reasonably* believed that there was an immediate need for his or her community caretaking assistance. This determination is often fact-specific, and varies greatly depending upon the circumstances of the case and the deciding court. Courts recognize that police faced with a possible emergency are often required to make split second decisions and, consequently, tend to be deferential toward police conclusions that their actions were necessary.[156] While some courts have held that certain situations are *per se* emergencies,[157] normally, it is necessary to consider the totality of circumstances to determine if the officer's belief that an emergency existed was objectively reasonable.[158] In addition, at least one court has developed a checklist of factors considered useful in determining whether there was an objectively reasonable basis for an officer's belief. These factors include "[t]he nature and specificity of the call, the speed with which the officers responded (thereby increasing the chances that the danger still existed)

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[156] In a case involving police response to a report of an unconscious woman, who in fact had died as a result of an illegal abortion, Circuit Judge (later Chief Justice) Burger observed:

> Fires or dead bodies are reported to police by cranks where no fires or bodies are to be found. Acting in response to reports of "dead bodies," the police may find the "bodies" to be common drunks, diabetics in shock, or distressed cardiac patients. But the business of policemen and firemen is *to act*, not to speculate or meditate on whether the report is correct. People could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process. Even the apparently dead often are saved by swift police response. A myriad of circumstances could fall within the terms "exigent circumstances" . . . , e.g., smoke coming out a window or under a door, the sound of gunfire in the house, threats from inside to shoot through the door at police, reasonable grounds to believe an injured or seriously ill person is being held within.

Wayne v. United States, 318 F.2d 205, 212 (D.C. Cir. 1963) (plurality opinion) (emphasis in the original).

In addition, some courts emphasize that responding police need not use the least intrusive alternative approach to addressing an emergency. "In recognizing the danger of delayed response, the law does not require adherence to a standard which 'made stricter by hindsight' would preclude the police from all courses of conduct but the least instrusive." People v. DePaula, 579 N.Y.S.2d 10, 12 (N.Y. App. Div. 1992) (quoting People v. Calhoun, 402 N.E.2d 1145, 1148 (N.Y. 1980)).

[157] *See, e.g.*, Michigan v. Tyler, 436 U.S. 499, 509 (1978) ("A burning building clearly presents an exigency of sufficient proportions to render a warrantless entry 'reasonable.'").

[158] *Id.*

and . . . [the] reception [of the police] by the defendant."[139] While each situation an officer encounters is factually unique, certain patterns have emerged in the judicial response to government claims that an emergency did exist. This article will now focus on various categories of events which reviewing courts have agreed generally provide a government agent with a reasonable belief in the existence of an emergency.

2. Situations in which the Emergency Doctrine has been Recognized

a) Person in need of medical treatment

One category of cases in which many courts have found the emergency doctrine to apply is in response to a report of a person in immediate need of medical treatment.[140] These cases often involve officers responding to reports of a drug overdose and the subsequent discovery of evidence of drug-related crimes in plain view.[141] Although these police responses are often contested, courts consistently deny defendants' motions to suppress this type of evidence when the officers are in a location or taking action designed to render aid to an unconscious or possibly injured person.[142] However, use of the emergency doctrine is

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[139] *DePaula*, 579 N.Y.S.2d at 11-12.

[140] *See, e.g.*, City of Troy v. Ohlinger, 475 N.W.2d 54 (Mich. 1991) (where witness of automobile accident reported to police officer that defendant drove away from accident scene holding his hand as if injured and police officer discovered defendant's damaged car in his driveway, police officer was justified as part of community caretaking function in shining flashlight into defendant's house and, upon seeing defendant bleeding and not moving, entering defendant's home to determine if medical assistance was required; officer's subsequent discovery of evidence of defendant's driving while intoxicated upheld).

[141] *See, e.g.*, LaFournier v. State, 280 N.W.2d 746 (Wis. 1979) (report of a drug overdose gave police officer justification to locate and aid victim in a residence without a warrant; police officer, once on premises, could seize evidence in plain view; however, since officer who came to victim's aid could not preserve the evidence he observed in plain view, an immediate entry by other officers without a warrant, restricted in nature and scope to securing the evidence observed by first officer in plain view, was lawful).

[142] *See, e.g.*, State v. Follett, 840 P.2d 1298 (Or. Ct. App. 1992) (where search of defendant's automobile for substance which might explain defendant's serious medical condition and symptoms consistent with intoxication caused by substance other than alcohol, search permissible under "emergency-aid doctrine"; convictions for driving while intoxicated and possession of controlled substances upheld).

not warranted merely by a report of a person under the influence of drugs or alcohol.[143] Courts have held that there must also be evidence that the impaired individual is in need of some sort of immediate medical treatment.[144]

In *Terry v. Commonwealth*,[145] decided by the Virginia Court of Appeals, a police officer arrived at a park in response to a medical emergency call where he found defendant in a semi-unconscious state.[146] While searching defendant's fanny pack to establish identification, locate medical information and to determine the cause of defendant's condition, the officer discovered marijuana.[147] The court upheld defendant's conviction for possession of marijuana after determining the officer's conduct fell within the parameters of legitimate community caretaking because: (1) the officer's initial investigation was reasonable; (2) the intrusion was limited; and (3) the officer was not investigating criminal conduct under the pretext of exercising his community caretaking function.[148]

In *LaFournier v. State*,[149] the Supreme Court of Wisconsin held a police officer's warrantless entry into a home was permissible under the emergency exception where a police officer responded to a report of a drug overdose.[150] The officer entered the house indicated in the report and discovered a seriously ill woman in the basement and drug paraphernalia on the basement floor in plain view.[151] The officer called for police backup to collect the paraphernalia while he accompanied the woman to the hospital.[152] The backup officers arrived and found the defendant sitting in the basement.[153] The defendant admitted that

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[143] *See, e.g.*, Bray v. State, 597 S.W.2d 763 (Tex. Crim. App. 1980).
[144] *See, e.g., id.* at 768.
[145] 474 S.E.2d 172 (Va. Ct. App. 1996).
[146] *Id.*
[147] *Id.* at 172-73.
[148] *Id.* at 174.
[149] 280 N.W.2d 746 (Wis. 1979).
[150] *Id.* at 748.
[151] *Id.*
[152] *Id.*
[153] *Id.*

he was under the influence of narcotics.[154] The officers found more drug paraphernalia near the defendant in plain view.[155] The officers subsequently arrested the defendant and discovered three bags of heroin on defendant's person during a search incident to the arrest.[156]

The Wisconsin Supreme Court affirmed the trial court's refusal to suppress the evidence and found the defendant guilty of criminal possession of narcotics.[157] The court held that a warrantless entry into a dwelling in response to a reported drug overdose is reasonable under the emergency doctrine. The initial responding officer was justified in entering the home without a warrant in order to aid the overdose victim.[158] The court further found that the backup officers were merely acting as a continuation of the initial officer's authority.[159]

Similarly, in *People v. Amato,*[160] the Supreme Court of Colorado upheld a warrantless entry and seizure where government agents responded to an emergency call for medical assistance.[161] Here, the police and the resuscitation unit of a fire department were dispatched to the defendant's residence on the basis of an emergency 911 call.[162] It was reported that the defendant had fallen in the bathroom and was not responding to his roommate's attempts to revive him.[163] A firefighter entered the bathroom to aid the defendant, and observed drugs and paraphernalia on top of the toilet tank.[164] The firefighter showed the items to a police officer, who promptly seized them.[165] The defendant was placed under arrest for criminal

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[154] *Id.* at 749.
[155] *Id.*
[156] *Id.*
[157] *Id.* at 751.
[158] *Id.* at 749-50.
[159] *Id.* at 750-51.
[160] 562 P.2d 422 (Colo. 1977).
[161] *Id.* at 424.
[162] *Id.* at 423.
[163] *Id.*
[164] *Id.*
[165] *Id.*

possession of illicit drugs and then transported to a hospital for treatment.[166]

The Colorado Supreme Court upheld the officers' entry into the dwelling and seizure of the items in plain view as valid under the emergency doctrine.[167] The Court concluded that the firefighters and the police officers acted reasonably given the emergency circumstances they encountered.[168]

The Oregon Court of Appeals used similar reasoning in *State v. Russell*.[169] In that case, a police officer and paramedics responded to a woman's report that she was unable to awaken her adult daughter, the defendant's sister.[170] The daughter was in her own home on the couch and appeared unconscious to the officer, who was looking through a window.[171] The daughter's three young children were also locked in the house by a door, locked with a dead bolt, that could only be opened from the inside with a key.[172] The responding officer, while standing outside, tried to wake the daughter by making noise. When this was unsuccessful, he entered the house through a basement window.[173] Inside, he observed marijuana plants growing in plain view, which were later found to belong to the defendant, the daughter's brother.[174]

The Oregon Court of Appeals affirmed the defendant's conviction for the manufacture and delivery of marijuana.[175] Although the paramedics eventually determined the defendant's sister was not in medical distress, the court nonetheless found that the circumstances of the case met the requirements of the emergency doctrine.[176] The officer was reasonable in believing

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[166] *Id.*
[167] *Id.*
[168] *Id.* at 424.
[169] 848 P.2d 657 (Or. Ct. App. 1993) (en banc).
[170] *Id.* at 658.
[171] *Id.*
[172] *Id.*
[173] *Id.*
[174] *Id.*
[175] *Id.* at 660.
[176] *Id.* at 659.

it was necessary to enter the house to aid the defendant's sister and her children.[177]

While these cases seemingly lead to the conclusion that a possible overdose always gives police the authority to enter a dwelling without a warrant, this is not necessarily true. For example, in *Bray v. State*,[178] a police officer received a dispatch to accompany an ambulance to the scene of a possible drug overdose.[179] When the officer arrived at the scene, the ambulance attendants had already investigated the situation and were preparing to leave.[180] The attendants told the officer that the defendant was under the influence of narcotics, but that he was conscious and not in need of any immediate assistance.[181] In addition, the officer learned that there were other people in the apartment who could seek aid for the defendant, if his condition should deteriorate.[182] Despite the ambulance attendants' assurances that there was no emergency at hand, the officer entered the apartment to investigate.[183] The officer stated that the ambulance attendants had told him that the defendant had recently injected a drug that they had not identified. Consequently, they were unclear whether it had taken effect. Thus, the officer believed it was his obligation to determine the cause of the overdose and investigate the defendant's condition.[184] The officer found the defendant holding drugs and paraphernalia in the bathroom of the apartment.[185] The defendant was convicted of heroin possession and, as a repeat felony offender, he was sentenced to life imprisonment.[186]

The appellate court reversed the defendant's conviction on the grounds that the drug evidence was inadmissible.[187] The

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[177] *Id.*
[178] 597 S.W.2d 763 (Tex. Ct. Crim. App. 1980).
[179] *Id.* at 765.
[180] *Id.* at 766.
[181] *Id.*
[182] *Id.*
[183] *Id.* at 767.
[184] *Id.* at 766.
[185] *Id.* at 767.
[186] *Id.* at 763.
[187] *Id.* at 769.

court found that the officer was not reasonable in believing that an emergency existed that would justify his warrantless entry into the apartment.[188] The court noted that while some overdose reports will warrant use of the emergency exception, in this case, the facts strongly indicated that there was no objective basis for finding that an emergency existed.[189] The trained members of the ambulance crew had already concluded that there was no emergency and had related this information to the officer.[190] Furthermore, as the defendant was no longer unconscious when the officer arrived, the officer was not acting to aid a possible overdose when he entered the apartment.[191] The court noted there is a difference between rendering emergency aid and investigating the possible criminal cause of an emergency.[192] This case illustrates how a reviewing court may reject an officer's claim that he was addressing an emergency when the facts suggest instead that he was pursuing law enforcement functions.

In assessing a Sixth Amendment claim of ineffective assistance of counsel in a case where the defendant's lawyer neglected to file a motion to suppress evidence obtained during a warrantless entry, which police claimed was justified by an emergency, one appellate court held that the defendant's rights to a fair trial had been violated because of the lawyer's ommission. In *Commonwealth v. DiGeronimo*,[193] the court held that an officer's entry into an intoxicated defendant's apartment was not a valid use of the emergency doctrine when the defendant was not in need of medical attention.[194] In this case, on his way home from a tavern, the defendant was involved in an automobile accident in which he crashed his car into the rear end of

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[188] *Id.* at 768.

[189] *Id.*

[190] *Id.*

[191] *Id.*

[192] *Id.*

[193] 652 N.E.2d 148, 159 (Mass. App. Ct. 1995).

[194] *Id.* at 155. *See also* Morris v. State, 908 P.2d 931, 937 (Wyo. 1995) (deputy sheriff overstepped his community caretaking function by searching wallet of somewhat disoriented defendant found sleeping in someone else's backyard since defendant sufficiently alert "to answer questions and keep his faculties about him").

another vehicle.[195] Neither party was injured, but the other driver's car was inoperable.[196] The other driver noticed that the defendant appeared to be intoxicated—his speech was slurred and he used obscenitites.[197] The defendant left the scene and drove to his apartment where he called the police and reported the accident.[198] The defendant then turned on his television and fell asleep in a chair.[199] An officer was sent to the scene of the accident to investigate.[200] He spoke with the driver of the other vehicle who told the officer he believed that the defendant was drunk.[201] The officer then went to the defendant's apartment.[202] He knocked on the door, but received no answer.[203] However, the officer could hear the sound of the defendant's television inside.[204] Thereafter, the officer entered the defendant's apartment using a security guard's passkey and arrested the defendant.[205] The trial court found the defendant guilty of the misdemeanor of operating a motor vehicle while under the influence.[206]

The appeals court reversed, and held that, in spite of the officer's claim that he entered the apartment under the subjective belief that the defendant was in need of aid, the entry was unjustified.[207] The court found there was no objective basis for believing that the defendant was in need of medical aid.[208] The court noted that the other driver told the officer that the defendant was drunk, not injured.[209] Furthermore, the defendant was able to drive himself home from the accident and had

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[195] *DiGeronimo*, 652 N.E.2d at 150.
[196] *Id.*
[197] *Id.*
[198] *Id.* at 151.
[199] *Id.*
[200] *Id.*
[201] *Id.*
[202] *Id.*
[203] *Id.*
[204] *Id.*
[205] *Id.* at 151-52.
[206] *Id.* at 152.
[207] *Id.* at 155.
[208] *Id.*
[209] *Id.*

called the police to report the incident, without indicating that he was in need of aid.[210] In addition, there were no "alarming signs" outside of the defendant's apartment, such as blood or the sound of screams or moans, that would support an objective belief that the defendant was in need of emergency assistance.[211] Also, the officer was at the scene of the accident for nearly an hour before he proceeded to the defendant's residence, thereby implying that he did not view the situation as an emergency.[212] As a result, the court decided that the defendant's rights had been violated by his attorney's failure to challenge the unconstitutional police entry, and granted a new trial.[213]

b) Missing Persons

Not only do the courts often uphold warrantless police entries as valid when a person is thought to be in need of aid, but the courts have routinely upheld the use of the emergency doctrine in response to a report of a missing person as well.[214] Courts have upheld searches for a missing person at his or her residence,[215] at the last place the missing person was seen,[216] and at places where evidence that would reveal the location of the missing person might be found.[217] While some courts have accepted the report of a missing person alone to be sufficient in establishing an emergency,[218] more often, courts also look to the circumstances surrounding the report to see if the belief that an emergency existed was reasonable.[219]

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[210] *Id.*

[211] *Id.*

[212] *Id.*

[213] *Id.* at 159.

[214] *See, e.g.,* Brimage v. State, 918 S.W.2d 466 (Tex. Crim. App. 1996) (en banc) (entry of residence to find missing person or evidence of missing person's whereabouts upheld); People v. Wharton, 809 P.2d 290 (Cal. 1991) (entry of residence to locate missing individual upheld); Chaney v. State, 612 P.2d 269 (Okla. Crim. App. 1980) (entry of premises to discover evidence that might reveal missing person's whereabouts upheld).

[215] People v. Bondi, 474 N.E.2d 733, 736 (Ill. App. Ct. 1984).

[216] People v. Mitchell, 347 N.E.2d 607, 610 (N.Y. 1976).

[217] Chaney v. State, 612 P.2d 269, 277 (Okla. Crim. App. 1980).

[218] *See, e.g.,* People v. Bondi, 474 N.E.2d 733, 735 (Ill. App. Ct. 1984).

[219] *See, e.g.,* State v. Epperson, 571 S.W.2d 260 (Mo. 1978).

For example, in *Oken v. State*, the Maryland Court of Appeals upheld a police entry into a home based on the emergency doctrine in circumstances involving a missing person.[220] A missing woman's sister called the police to a townhouse.[221] The sister told the officers that she was afraid her sister had been harmed.[222] She pointed out to the police that the door of the townhouse was partially open, the house was in disarray, and there was blood on the floor near the entrance.[223] One police officer entered the house and found evidence, including blood and women's clothing, in plain view.[224] When no one was found inside, the police secured the premises, obtained a warrant to further search the house, and found a weapon during the later search that had been used by the defendant in an earlier murder of another woman.[225] The defendant moved to suppress the weapon found in his townhouse on the theory that the initial warrantless entry into the townhouse was illegal and the later search was a "fruit of the poisonous tree."[226] The trial and appellate courts held that the officer's initial entry into the home based on the totality of the circumstances was an appropriate use of the emergency doctrine.[227] Consequently, the evidence found in the defendant's townhouse implicating the defendant in the earlier murder was properly used in the defendant's conviction for the earlier murder.[228]

In a similar case decided by the Supreme Court of Missouri, *State v. Epperson*, police officers responded to a mother's report of her missing adult daughter and grandchildren.[229] The mother had tried unsuccessfully to reach her daughter by telephone for several days and when she questioned the daughter's

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[220] 612 A.2d 258, 267 (Md. 1992).

[221] *Id.* at 265.

[222] *Id.*

[223] *Id.*

[224] *Id.*

[225] *Id.* at 266. The missing woman's (defendant's wife) body was later discovered by police. *Id.*

[226] *Id.*

[227] *Id.* at 267.

[228] *Id.*

[229] 571 S.W.2d 260, 262 (Mo. 1978).

husband about their whereabouts, he offered several inconsistent excuses.[230] The mother's suspicions grew when she went to her daughter's home and saw her daughter's purse, one the daughter always carried with her, but could not locate her daughter.[231] The mother claimed she smelled an odor in the house that she associated with death.[232] Police officers went to the daughter's house to investigate, but no one answered the door.[233] The officers then went to the home of a neighbor to phone the daughter's work place and the school of one of her daughter's children in an effort to locate them.[234] When these attempts were unsuccessful, an officer entered the house through a window and found the bodies of the daughter and her two children.[235] The court upheld the entry, which led to the husband's conviction for three counts of first-degree murder, by finding that the mother's report and the additional facts obtained by the police were sufficient to justify the entry.[236]

In applying the emergency doctrine to cases of missing persons, some court opinions have suggested an additional factor in determining if government use of the doctrine was proper. That factor is the response speed of the police. For example, the dissent in *Epperson* argued that the police response speed showed that this situation was not an emergency, and emphasized the two and one-half hour delay between the time the officers were informed of the situation and their entry into the home.[237] While the dissent conceded that an emergency was present at the time of the mother's initial report,[238] it found the officers' entry unreasonable because the delay suggested that the officers were not treating the situation as an emergency.[239]

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[230] *Id.*

[231] *Id.*

[232] *Id.* *See supra* Part III.A.2.h for a discussion of emergency arising from an odor of a dead body.

[233] 571 S.W.2d. at 262.

[234] *Id.*

[235] *Id.* at 263.

[236] *Id.* at 264.

[237] *Id.* at 269-70 (Mo. 1978) (Seiler, J., dissenting).

[238] *Id.* at 270.

[239] *Id.* at 270, 272. *See supra* Part III.B for a discussion of officer's motivation in the context of the emergency doctrine.

The dissent felt that since the officers chose to attempt to locate the daughter, rather than take immediate action such as forcibly entering defendant's premises, the officers had time to obtain a search warrant.[240] Further, the dissent asserted that upholding warrantless entries after such a delay does not promote prompt police action in emergencies.[241]

In an Oregon Supreme Court case, *State v. Bridewell*,[242] the court followed the reasoning of the dissent in *Epperson*. In this case, a friend of the defendant became concerned after he did not return her phone message for several days.[243] The friend went to the defendant's house and discovered that the front door was open.[244] She noticed that the house was in disarray and found an empty gun holster.[245] Both of the defendant's vehicles were missing.[246] The friend could not locate the defendant in his home or in his shop, located a few hundred yards away.[247] She reported her concerns to a sheriff's deputy around 10:00 P.M.[248] Following department custom to wait until daylight to begin an investigation, the deputy took no further action until the next morning.[249] The next day, two deputies went to the house to search for the defendant.[250] When the deputies did not find him there, they entered his shop, and saw marijuana plants in plain view.[251] The court suppressed this evidence and held, due in part to the deputies' delay in taking action, no valid emergency existed that could validate the warrantless entry.[252] The court noted that twelve hours had passed between the time of the report and the action taken by the deputies.[253]

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[240] *Id.* at 271.
[241] *Id.* at 270.
[242] 759 P.2d 1054 (Or. 1988).
[243] *Id.* at 1056.
[244] *Id.*
[245] *Id.*
[246] *Id.*
[247] *Id.*
[248] *Id.*
[249] *Id.*
[250] *Id.*
[251] *Id.* at 1057.
[252] *Id.* at 1058.
[253] *Id.*

Although the department custom required a delay in the investigation until daylight, they waited until 10:00 A.M. to take action. The court found that this greatly dissipated the necessity of immediate action and, therefore, there was no true emergency.[254] The court also suggested that the deputies could have obtained a warrant during the early morning hours.[255]

While this additional factor concerning an officer's response speed may at first glance appear to promote a finding of immediacy, it is actually misleading in determining if a situation was an emergency. As previously stated, the standard for determining if an emergency existed is an objective, not a subjective, one.[256] In order to maintain a consistent standard in missing persons cases, as in all others, courts should evaluate the totality of the surrounding circumstances in deciding if an entry was valid. Otherwise, in identical factual situations courts could reach different conclusions based upon the responding officer's response time. Furthermore, the very nature of missing persons cases argues against an immediate action requirement. Since adults are generally free to come and go as they please, which might explain why they have temporarily disappeared, more facts beyond the missing persons report are often necessary to determine if there is an objectively reasonable basis to believe that the person is in some sort of peril.

c) Kidnapping

Yet another category in which courts have found the emergency doctrine to be applicable is in response to a reported kidnapping. Due to the inherently dangerous circumstances which surround a kidnapping, most courts take the position that when police officers receive a report of a kidnapping there is a per se need for immediate action which warrants use of the emergency doctrine.

In *Oliver v. State*,[257] the court upheld a warrantless entry where it took two days for officers to verify that the defendant

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[254] *Id.*

[255] *Id.*

[256] *See supra* Parts III.A & III.A.1.

[257] 656 A.2d 1159 (D.C. 1995).

had kidnapped a baby from a hospital. In *Oliver*, police officers responded to a call from a hospital regarding a newborn baby taken from the hospital nursery.[258] The officers were told that the defendant may have been a volunteer at the hospital nursery on the day of the baby's disappearance.[259] In addition, there was a report that the defendant had told a friend she had just given birth to a baby the very same day.[260] The officers went to the defendant's home to investigate,[261] and brought along another hospital volunteer to try to make an identification.[262] However, the volunteer was unable to make a positive identification of the woman at that time.[263] The officers and the volunteer then returned to the house an hour later so the volunteer could try to identify the baby, but she was unable to do so.[264] The defendant assured the police that the baby was hers and had been delivered by a Dr. Worth earlier that day in the hospital.[265] The next day, while attempting to verify this information with the hospital,[266] the officers learned that there was no Dr. Worth on staff at the hospital and that the defendant had not been a patient at the hospital within the past five years.[267] The officers returned to the defendant's house to confront her with their findings,[268] and when she was unable to offer any explanation, the officers retrieved the baby.[269] The baby was taken to the hospital for identification while the defendant was taken to the police station to face charges of kidnapping.[270]

The appellate court upheld the entry under the emergency exception.[271] The court ruled that, unlike some other emer-

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[258] *Id.* at 1161.
[259] *Id.*
[260] *Id.*
[261] *Id.*
[262] *Id.*
[263] *Id.* at 1162.
[264] *Id.*
[265] *Id.*
[266] *Id.*
[267] *Id.*
[268] *Id.*
[269] *Id.* at 1162-63.
[270] *Id.* at 1163.
[271] *Id.* at 1170.

gency categories where police officers are required to point to articulable facts beyond the initial report to make a showing of a reasonable need for immediate action,[272] the very nature of a kidnapping presents "unusually compelling circumstance[s]."[273] The court noted that even if the victim is assumed safe at one moment, there is a great risk that the situation may change and the victim may be seriously harmed or even killed.[274]

In an adult kidnapping case, *Chaney v. State*,[275] the Court of Criminal Appeals of Oklahoma also upheld a warrantless entry by law enforcement officers under the emergency doctrine.[276] In this case, a man informed the FBI that he had received a ransom demand for the return of his wife.[277] The FBI made arrangements to trace any additional calls made to the man.[278] The next day, the man received a second call demanding ransom and explaining the procedure for payment of the ransom.[279] The call was traced to the defendant's residence.[280] Later that evening, the kidnapper placed a third call during which he accused the man of not following his demands and threatened to kill the man's wife.[281] The FBI traced this call to a telephone booth where the defendant's palm print was later discovered.[282] The law enforcement agents organized a raid of the defendant's residence, where they found the bodies of the man's wife and another woman.[283] The defendant was ultimately convicted of first-degree murder and sentenced to death.[284]

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[272] *See supra* notes 218-19 (report of missing person usually requires consideration of facts suggesting emergency actually exists).

[273] *Oliver*, 656 A.2d at 1167.

[274] *Id.*

[275] 612 P.2d 269 (Okla. Crim. App. 1980).

[276] *Id.* at 277.

[277] *Id.*

[278] *Id.*

[279] *Id.*

[280] *Id.*

[281] *Id.*

[282] *Id.*

[283] *Id.* at 274, 277.

[284] *Id.* at 273.

The court found that the warrantless raid of the defendant's property was justified.[285] The final ransom call gave the authorities reason to believe that the woman was in great danger and that her death was imminent.[286] Emergency action was necessary to minimize the likelihood of harm.[287]

d) Child in Danger

Another important category where courts have upheld the use of the emergency exception is in response to a report of a child in danger. While many cases involving the safety of children may also be classified in one of the other categories that appear in this article,[288] some cases rest on circumstances unique to children, such as reports of child abuse or neglect.[289] Courts have consistently recognized the increased gravity of situations involving children, who are generally less able to take care of themselves than adults.[290] In fact, many states have statutory authority justifying the removal of children from dangerous situations.[291] While it is unclear if this type of legislation standing alone is enough to justify a warrantless entry, it tends to lend support to an officer's belief that he or she is justified in acting under the emergency doctrine if a child is in danger. In any event, if the totality of the circumstances give rise to a reasonable belief that a child is in danger, it is appropriate for government agents to take immediate action. A report of a child alone may or may not qualify as an emergency depending on the location of the child, the length of time the child has been left alone, and certainly, on the age of the child.

In *People v. Malczewski*, the Supreme Court of Colorado rejected the defendant's statutory immunity defense[292] to a charge of assault against a police officer by finding that the officer was

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[285] *Id.* at 277.

[286] *Id.*

[287] *Id.*

[288] *See, e.g.*, People v. Meddows, 427 N.E.2d 219, 222 (Ill. App. Ct. 1981).

[289] *See, e.g.*, State v. Garland, 636 A.2d 541, 548-49 (N.J. Super. Ct. App. Div. 1994) (unattended children).

[290] *See, e.g.*, State v. Boggess, 340 N.W.2d 516, 524 (Wis. 1983).

[291] *See, e.g.*, People v. Malczewski, 744 P.2d 62, 66 (Colo. 1987).

[292] *Id.* at 64; *see* COLO. REV. STAT. § 18-1-704.5, 8B (1986).

lawfully in the defendant's home because of an emergency situation.[293] In this case, a police officer on routine patrol was flagged down by the defendant's wife.[294] The wife told the officer that the defendant had taken their baby from the wife's niece's house to their apartment.[295] She said she was concerned for the safety of the baby because her husband had been drinking.[296] She asked for the officer's assistance.[297] The officer went to the apartment and knocked on the door.[298] The defendant did not open the door to the apartment, but instead opened the screen to a window to ask the officer why he was there.[299] The officer heard a baby crying in the apartment. He told the defendant that he was there to check on the baby.[300] Then, the defendant, with the baby in his arms, opened the door to the apartment.[301] The officer entered the doorway to talk to the defendant.[302] The officer was attempting to discuss the situation with the defendant when the defendant suddenly began beating the officer with his one free hand.[303] The officer was knocked down and, after putting the baby down, the defendant began to kick and hit the officer.[304] The officer was injured in his head and throat.[305] Another man was also injured when he tried to aid the officer and restrain the defendant.[306]

The Supreme Court of Colorado overruled a lower court's holding that the defendant was entitled to statutory immunity from prosecution, and reversed the lower court's dismissal of the charges.[307] The court stated that since the defendant was

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[293] *Malczewski*, 744 P.2d at 66.
[294] *Id.* at 64.
[295] *Id.*
[296] *Id.*
[297] *Id.*
[298] *Id.*
[299] *Id.*
[300] *Id.*
[301] *Id.*
[302] *Id.*
[303] *Id.*
[304] *Id.*
[305] *Id.*
[306] *Id.*
[307] *Id.* at 67.

raising the affirmative defense of statutory immunity, he was required to put forth the evidence to support the claim, and since he failed to do so, the defense failed.[308] In addition, the court found that the police officer was lawfully in the defendant's apartment addressing an emergency situation.[309] The court stated that, based on the wife's statements, the officer "had reason to believe that an immediate crisis existed with respect to the safety of the baby and that his entry into the apartment would be helpful in alleviating that crisis."[310] In addition, the court cited statutory authority[311] which authorizes a law enforcement officer to take a child into temporary custody without a court order when the child is in serious danger.[312] The court did not clarify whether the statute merely lent support to the officer's emergency entry or was an alternative justification for his entry.

In a Wisconsin case, *State v. Boggess*,[313] the court rejected a government agent's reliance on a state statute to justify a warrantless entry in the defendant's home, but nonetheless upheld the entry by government authorities under the emergency exception.[314] In the case, a social worker received an anonymous telephone call claiming that two children had been battered and were in need of medical attention.[315] The caller identified the children by name and told the worker that the children lived with the defendant, who had a bad temper.[316] The social worker who received the call immediately telephoned another social worker on duty that evening and that worker, accompanied by a police officer for her protection, went to the defendant's home to investigate.[317] When the defendant answered the door, the social worker informed him that she and the officer

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[308] *Id.* at 65.
[309] *Id.* at 66.
[310] *Id.*
[311] *Id.*; *see* COLO. REV. STAT. § 19-2-101(1)(b), 8B (1986).
[312] *Malczewski*, 744 P.2d at 66.
[313] 340 N.W.2d 516 (Wis. 1983).
[314] *Id.* at 520-25.
[315] *Id.* at 519.
[316] *Id.*
[317] *Id.* at 519-20.

were there to check on the children's welfare.[318] The defendant asked if they had a warrant.[319] The social worker stated the she did not need a warrant under the Wisconsin Children's Code, whereupon she and the officer entered the home.[320] Inside the home, the social worker examined the children.[321] She observed that both children were bruised.[322] One of the children, a boy, was missing hair from the top of his head, had part of his lip torn off and inflamed, and walked with a noticeable limp.[323] The defendant stated that he had accidentally fallen on the boy and, later, he said that he had spanked both children several times.[324] The children were immediately taken to a hospital where they were treated and photographed.[325] Later, the defendant was charged with child abuse. The defendant filed a motion to suppress his statements made in the house, the observations of the children by the social worker and the police officer, and the photographs of the children taken at the hospital.[326] When the motion was denied, the defendant entered a conditional plea of guilty to the charges.[327] He appealed the admission of the evidence on the theory that the evidence was a product of an illegal search.[328]

The Supreme Court of Wisconsin affirmed the defendant's conviction and found that the entry into the defendant's home was valid under the emergency doctrine.[329] The court first noted that the Children's Code does not expressly authorize a warrantless entry into a house, and that even if the authority was implied in the statute, it could not supersede the United States and Wisconsin State Constitutions' prohibitions against unrea-

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[318] *Id.* at 520.
[319] *Id.*
[320] *Id.*
[321] *Id.*
[322] *Id.*
[323] *Id.*
[324] *Id.*
[325] *Id.*
[326] *Id.*
[327] *Id.*
[328] *Id.*
[329] *Id.* at 525.

sonable search and seizure.[330] However, the court then found that the totality of the circumstances indicated that an emergency existed which required the officer and social worker to enter the home to aid the children.[331] The court emphasized that the anonymous caller provided detailed information about the children, indicated that he knew the defendant, and had personally witnessed the children's injuries.[332] In addition, when the defendant answered the door, he did not deny that the children lived there, but instead asked the social worker if she had a warrant.[333] The court found this provided corroboration for at least a portion of the informant's report.[334] The court further emphasized that these were "small children inside a home, who are less able to protect themselves from further harm or to independently seek medical attention than are adults."[335] In addition, the defendant's reported bad temper created the possibility that the children could be injured further at any time.[336] The court concluded that it was reasonable for the officer and social worker to believe that there was an immediate need to enter the home to aid the children.[337]

Similarly, in *State v. Garland*,[338] the court found that a report of unattended children constituted an emergency.[339] In that case, two police officers were on routine patrol when they noticed a suspicious vehicle.[340] After observing the driver make an improper lane change, the officers pulled along side of the vehicle.[341] They then noticed a small girl slouched down in the passenger seat. Remaining in their car, the officers questioned the driver through the window about the identity of the girl.[342]

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[330] *Id.* at 520.
[331] *Id.* at 525.
[332] *Id.* at 524.
[333] *Id.*
[334] *Id.*
[335] *Id.*
[336] *Id.* at 525.
[337] *Id.*
[338] 636 A.2d 541 (N.J. Super. Ct. App. Div. 1994).
[339] *Id.* at 548.
[340] *Id.* at 544.
[341] *Id.*
[342] *Id.*

The driver claimed to be a friend of the child's mother, but he was unable to tell the officers the child's name or her address.[343] The officers proceeded to curb the car based on the improper lane change and out of concern for the child.[344] The driver was found holding an open beer can and could not produce a driver's license. The officers then performed a protective frisk of the driver and discovered a bag of drugs.[345] The officers arrested the driver and placed him in the back of the squad car.[346] Immediately after the arrest, the officers questioned the girl about her identity. The girl said that the driver was her mother's friend, but she did not know his name.[347] The girl said that she had not seen her mother in two days. She also claimed to have just been at a party at a local motel, which the officers recognized for its reputation for prostitution.[348] The girl told the officers that other children were still at the motel and that they were left alone in a room of the motel.[349] Using a motel key found on the driver, the officers went to the motel room to locate the other children.[350] When they knocked on the motel room door, the officers received no answer.[351] The officers entered and discovered two adult women, two children, and large quantities of narcotics in plain view.[352] The children were unharmed.[353] The officers seized the drugs and arrested the women, who, along with the driver, were later found guilty of various drug-related charges.[354]

The court upheld the warrantless entry into the motel room on the basis of the emergency exception.[355] The court stated that a reasonable belief that children are unattended constitutes

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[343] *Id.*
[344] *Id.*
[345] *Id.* at 544-45.
[346] *Id.* at 545.
[347] *Id.*
[348] *Id.*
[349] *Id.*
[350] *Id.*
[351] *Id.*
[352] *Id.*
[353] *Id.*
[354] *Id.* at 543-44, 545.
[355] *Id.* at 548.

an emergency.[356] This finding was based, in part, on the fact that leaving children unattended is deemed by the New Jersey legislature to be such a substantial threat to their safety that it is grounds for criminal prosecution in that state.[357] While this holding seemed to imply that any instance of an unattended child is sufficiently serious to justify use of the emergency exception, it is important to note that the court also emphasized particular facts in this case that substantiated their finding of an emergency.[358] The officers knew the girl had not seen her mother for two days and that two other children were alone in a motel known for prostitution.[359]

e) Report of a Possible Assault in Progress

A report of an assault in progress may also permit the use of the emergency doctrine. In *United States v. Booth,* a police officer received a radio report of an assault in progress at a private residence.[360] The officer went to the address and knocked on the door.[361] The defendant answered and the officer noticed dried blood on the defendant's nose, which the defendant would not explain.[362] The officer testified that he then entered the house to see if anyone inside was injured.[363] Once inside, the officer observed a man whose face was covered in blood and who claimed that the defendant had attacked him.[364] As a result, the officer placed the defendant under arrest.[365] The court held that the officer's warrantless entry was valid under the emergency exception.[366] The assault report and the unexplained blood on the defendant justified the officer's belief that some-

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[356] *Id.*
[357] *Id.*
[358] *Id.*
[359] *Id.*
[360] 455 A.2d 1351, 1352 (D.C. 1983).
[361] *Id.*
[362] *Id.*
[363] *Id.*
[364] *Id.* at 1352-53.
[365] *Id.* at 1353.
[366] *Id.* at 1356.

one inside might have been injured and in need of his assistance.[367]

In *State v. Gilbert*, the court held that a report of domestic violence justified a police officer's entry into defendant's home to aid the victim of the domestic abuse inside.[368] In that case, a neighbor of the defendant reported to police that defendant had just hit her and defendant's wife.[369] The Defendant's wife met the officer as he approached the home. She had a swollen lip and was very upset emotionally.[370] However, she told the officer that the defendant was not home and insisted that the officer not enter.[371] Based on the officer's experiences with domestic violence, he believed that defendant's wife might be hiding the defendant inside their home and that further violence might be inflicted upon the wife by the defendant and, consequently, he entered the home, eventually discovering marijuana plants.[372] Here, the domestic violence report, combined with the officer's experience with this form of criminality, justified the officer's entry.[373] Thus, the court of appeals reversed the trial court's decision to grant a motion to suppress the marijuana, stemming from defendant's prosecution for the marijuana activity.[374]

f) Report of Person with Gun or Gunfire

The emergency doctrine may also apply when the police respond to a report of a person brandishing a gun, or a report of gunfire. Display, or even possession of a gun in certain places[375] or by certain individuals[376] may be per se illegal. Display of a

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[367] *Id.*

[368] 942 P.2d 660, 666 (Kan. Ct. App. 1997).

[369] *Id.* at 662.

[370] *Id.*

[371] *Id.*

[372] *Id.*

[373] *Id.* at 666.

[374] *Id.*

[375] *See, e.g.*, 720 ILL. COMP. STAT. §5/24-1(a)(10) (West 1997) (carrying or possessing a firearm on public property within a city or town prohibited except under certain circumstances).

[376] *See, e.g.*, 720 ILL. COMP. STAT. §5/24-1.1 (West 1997) (convicted felons).

gun in a bank or the report of gunfire in a residence should, of course, prompt immediate police inquiry.[377] Obviously, this type of situation may present an immediate danger to the person making the report or to others. However, since handling a gun and discharging a gun in some situations, such as at a shooting range or hunting preserve may be entirely legal, police may be required to verify if the situation poses a threat to life or limb. The following cases illustrate some of the ways in which officers can determine that a report of a person with a gun or gunfire poses a threat to personal safety and, concomitantly, take action consistent with their obligation to protect society from harm.

In *State v. Klauss*, the defendant was speaking to his girlfriend on the telephone.[378] The girlfriend believed that the defendant was angry and intoxicated.[379] She claimed to hear the sound of a gun firing in the background and she feared that the defendant might harm himself.[380] The police were notified of the situation and, consequently, officers were sent to the defendant's residence to investigate.[381] Upon arriving at the defendant's house, the officers met the defendant's roommates outside.[382] The roommates told the police that they did not know the defendant's whereabouts, but they believed that he was not at home because they had been unsuccessful in preventing him from leaving the house.[383] However, when the roommates admitted there were guns in the house,[384] the police entered the house to search for the defendant and discovered marijuana in plain view.[385] The court upheld this warrantless entry, which ultimately led to the defendant's conviction for possession of marijuana, under the emergency exception.[386]

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[377] *See, e.g.*, People v. DePaula, 579 N.Y.S.2d 10, 12 (N.Y. App. Div. 1992) (gunfire is cause for police inquiry, and for entry for purpose of offering aid to person in need).

[378] 562 A.2d 558, 559 (Conn. App. Ct. 1989).

[379] *Id.*.

[380] *Id.*

[381] *Id.*

[382] *Id.*

[383] *Id.*

[384] *Id.*

[385] *Id.* at 560.

[386] *Id.* at 561.

The following three cases illustrate the judiciary's willingness to uphold immediate police action in the face of a corroborated report of gunfire or a person with a gun. In *People v. Isaac*, two police officers were responding to a report of a man with a gun when they heard screams coming from inside an apartment.[387] The officers knocked on the door of the apartment.[388] The defendant opened the door and the officers saw a bruised woman standing inside.[389] The officers also saw the defendant toss a silver object to the floor.[390] One officer grabbed the defendant and the other officer stepped into the apartment.[391] The officer observed a weapon in plain view and seized it, ammunition, a fake police shield, and handcuffs.[392] In affirming defendant's conviction, the appellate court held the entry was permissible under the emergency doctrine and these items were properly seized.[393]

In *People v. Love*, officers responded to a report of a man with a gun in a hotel room.[394] When police knocked on the door, a woman answered and immediately tried to slam the door shut when she saw the officers.[395] The officers entered the room and discovered guns and narcotics in plain view.[396] Again, the appellate court upheld the warrantless search under the emergency doctrine and affirmed the defendant's conviction for possession of a controlled substance.[397]

Finally, in *People v. DePaula*, the police received reports of shots being fired in a particular apartment in an apartment building.[398] When police knocked on the defendant's door, the defendant answered, but refused to allow the police to enter to

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[387] 599 N.Y.S.2d 113, 113-14 (N.Y. App. Div. 1993).
[388] *Id.* at 114.
[389] *Id.*
[390] *Id.*
[391] *Id.*
[392] *Id.*
[393] *Id.*
[394] 610 N.Y.S.2d 958, 958 (N.Y. App. Div. 1994).
[395] *Id.*
[396] *Id.*
[397] *Id.*
[398] 579 N.Y.S.2d 10 (N.Y. App. Div. 1992).

investigate.[399] The defendant tried to slam the door shut and was otherwise acting suspiciously.[400] The police entered and found money, drugs, and a weapon.[401] Here too, the entry was deemed proper and the defendant's motion to suppress the confiscated evidence was denied on appeal.[402]

In all of the cases in this section, the officers were acting on tips that prompted them to investigate a potentially dangerous situation. In each, the emergency exception was properly invoked because these tips, in combination with other factors, led the officers to reasonably believe that an emergency was occurring, and that immediate action had to be taken to aid someone. Also, these cases seem to suggest that an anonymous or unsubstantiated tip of firearms or gunfire alone is not enough to warrant use of the emergency exception, because a tip could be fabricated by officers or others with improper motives. However, in each of these cases, the officers were found to be acting with proper corroborating evidence. For example, in *Klauss*, the court emphasized that the officers were acting not just on the girlfriend's report, but on the totality of the circumstances.[403] The defendant was reported to be intoxicated and upset.[404] There was a report of gunfire, and a confirmation that guns were present in the house.[405] Furthermore, the defendant's whereabouts were unknown.[406] In *Isaac*, the situation was escalated from a mere report of a man with a gun to an emergency situation when the officers heard screams and saw an injured woman inside the apartment.[407] Finally, the courts in *Love* and *DePaula* held that the suspicious behavior of the parties when the police knocked on the doors, in combination with the

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[399] *Id.*
[400] *Id.*
[401] *Id.* at 11.
[402] *Id.*
[403] State v. Klauss, 562 A.2d 558, 561 (Conn. App. Ct. 1989).
[404] *Id.*
[405] *Id.*
[406] *Id.*
[407] People v. Issac, 599 N.Y.S.2d 113, 114 (N.Y. App. Div. 1993).

tips, led the officers to reasonably believe that something was wrong inside.[408]

g) Report of Possible Homicide

Another situation where courts have upheld warrantless entries under the emergency doctrine is when police respond to a report of a possible homicide or suicide.[409] The United States Supreme Court has expressly rejected a per se "murder scene" exception to the warrant requirement.[410] However, courts have found that in situations where the death of the victim is uncertain, police officers are reasonable in entering a dwelling to aid a dying or critically injured victim.[411]

In the United States Supreme Court case of *Mincey v. Arizona*, an undercover narcotics agent had arranged to purchase heroin from the defendant.[412] The agent went to the defendant's apartment accompanied by other officers.[413] An acquaintance of the defendant opened the door for the agent, who quickly went in to the bedroom.[414] Immediately thereafter, the other officers heard a series of shots from the bedroom.[415] The agent exited the bedroom and collapsed from gunshot wounds in front of the officers.[416] The agent died of these wounds a few hours later.[417] The officers who were present during the shooting searched the apartment for other victims and found a wounded woman in the bedroom closet, and the defendant un-

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[408] People v. Love, 610 N.Y.S.2d 958, 958 (N.Y. App. Div. 1994); People v. DePaula, 579 N.Y.S.2d 10, 11-12 (N.Y. App. Div. 1992).

[409] *See, e.g.*, State v. Terrell, 283 N.W.2d 529, 532 (Minn. 1979) (report of possible homicide).

[410] Mincey v. Arizona, 437 U.S. 385, 390 (1978). The Arizona Supreme Court had earlier reaffirmed and clarified the a so-called "murder scene" exception to the warrant requirement. State v. Mincey, 566 P.2d 273, 283 (1977), *rev'd*, 437 U.S. 385 (1978).

[411] *See, e.g., Terrell*, 283 N.W.2d at 532 ("while the information indicated that a homicide has occurred . . . it was possible that the victim, if there was a victim, might still be alive").

[412] 437 U.S. 385, 387 (1978).

[413] *Id.*

[414] *Id.*

[415] *Id.*

[416] *Id.*

[417] *Id.*

conscious on the bedroom floor.[418] The officers called for aid for the injured people and secured the premises.[419] Homicide detectives arrived at the apartment within ten minutes and took control of the investigation.[420] The detectives proceeded to search the entire apartment.[421] The search lasted four days and was exhaustive, including searches of drawers, closets, cupboards, and clothing pockets.[422] In addition, the detectives dug bullet fragments out of the floors and walls and took carpet samples for examination.[423]

The Supreme Court began its analysis by recognizing the obligations of police officers to respond to emergency situations.[424] The Court acknowledged that officers may enter to aid a victim, to search for other victims, or to see if an alleged killer is still on the premises.[425] However, the Court ruled that police officers are not justified in making a warrantless search, such as the four-day extensive search in this case, simply because a homicide had recently occurred at the location.[426] The Court held the homicide detectives' search impermissible because the narcotics officers had already located all of the potentially injured people in the apartment before the extensive search began.[427] Thus, the presence of a possible murder scene was deemed insufficient for a per se exception to the Fourth Amendment warrant requirement.[428]

It is important to contrast *Mincey* with cases where the police action in question is predicated on a reasonable belief that a crime victim on private premises may still be alive. In *Patrick v. State*[429], police were called to the scene by a report from the vic-

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[418] *Id.* at 387-88.
[419] *Id.* at 388.
[420] *Id.* at 388-89.
[421] *Id.* at 389.
[422] *Id.*
[423] *Id.*
[424] *Id.* at 392.
[425] *Id.*
[426] *Id.* at 395.
[427] *Id.* at 393.
[428] *Id.* at 395.
[429] 227 A.2d 486 (Del. 1967).

tim's employer.[430] The employer stated that he found the victim in bed with a serious head injury.[431] The employer was unsure if the victim was alive or dead.[432] The police officers immediately entered the victim's apartment and discovered the victim's body and evidence of the murder in plain view.[433]

The court upheld this warrantless entry by noting that reports of death may be inaccurate.[434] The court stated that there may be an occasion where "a spark of life remains" in the victim and officers may still be able to offer aid.[435] The officers in this case were not certain that the victim was dead when they entered the apartment, therefore, their belief that emergency assistance might be needed was reasonable.[436]

Similarly, in *State v. Gosser*, a woman reported to police that she had received a disturbing phone call from her friend's husband.[437] The husband was upset and told the woman that, in effect, something terrible had happened.[438] An officer was sent to the home of the couple to investigate.[439] The husband answered the door.[440] He was crying and his face and clothing were caked in blood.[441] When the husband told the officer that he had killed his wife, the officer immediately called headquarters for assistance.[442] Once the additional officers had arrived, the husband told them that he had shot his wife and that she was upstairs.[443] The police quickly searched the upstairs rooms until they found the wife's body.[444] The court held that the officers'

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[430] *Id.* at 488.
[431] *Id.*
[432] *Id.*
[433] *Id.*
[434] *Id.* at 489.
[435] *Id.*
[436] *Id.*
[437] 236 A.2d 377, 379 (N.J. 1967).
[438] *Id.*
[439] *Id.*
[440] *Id.*
[441] *Id.*
[442] *Id.*
[443] *Id.* at 380.
[444] *Id.*

search was justified.[445] The officers were reasonable in going upstairs to determine if the wife was still alive and in need of assistance.[446]

In *Maxey v. State*, officers received a call of a disturbance at a house.[447] The responding officers were met at the door of the house by the defendant's mother.[448] The officers later testified that the mother appeared excited and informed them that her son had just killed his wife.[449] In contrast, the mother later testified that she did not know if the wife was dead and that she had only told the officers that there had been a fight.[450] In any event, the officers entered the house and found the defendant in the kitchen.[451] The defendant told the officers that he had killed his wife and that her body was lying in the basement.[452] The officers went to the basement and found the wife's body.[453] The court found that the entry was justified and held that the police were reasonable in their belief that someone in the house could have been in need of assistance.[454] Therefore, the police were justified in entering to aid the injured or to prevent further injury.[455]

In conclusion, while the scene of a possible criminal homicide does not per se excuse the necessity of police procurement of a warrant, circumstances which suggest a homicide victim may still be alive and in need of aid will normally excuse this requirement.

h) Odor of a Dead Body

Another group of cases which have upheld warrantless entries under the emergency exception are those cases which in-

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[445] *Id.* at 382.
[446] *Id.*
[447] 244 N.E.2d 650, 652 (Ind. 1969).
[448] *Id.*
[449] *Id.*
[450] *Id.* The court found that the search was justified in either instance. *Id.* at 653.
[451] *Id.* at 653
[452] *Id.*
[453] *Id.*
[454] *Id.* at 654.
[455] *Id.*

volve a report of the odor of a dead body. Courts have upheld warrantless entries despite the seeming lack of need for immediate emergency aid for the deceased victim. These entries are justified on the uncertainty of whether or not the possible decedent is, in fact, dead.

In *People v. Brooks,* a janitor reported to police an unusual odor coming from the defendant's apartment.[456] The responding officers also noticed the odor, which they identified as being the odor of a dead body.[457] The officers entered the apartment and found the defendant's mother's body on the couch.[458] The defendant was later convicted of her murder.[459] The court held that the officers acted properly because they were not sure of the victim's status.[460] The court stated that the offensive odor may have indicated the victim was dead or, alternatively, severely burned or injured, and in need of aid.[461]

In another case decided by an Illinois appellate court, *People v. McGee,* a police officer investigated a report of a foul odor and barking dogs at the defendant's residence.[462] Upon arrival at the scene, the officer immediately noticed a foul odor coming from within the house.[463] Receiving no answer when he knocked on the door of the house, the officer looked in the window.[464] He observed that the house was in disarray.[465] There were animal cages strewn about the house, and there were several animals in cages without food or water.[466] He also noticed insects flying around inside the premises.[467] The officer then entered through the back door.[468] The officer testified that the overwhelming stench along with the disarray of the house led

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[456] People v. Brooks, 289 N.E.2d 207, 210 (Ill. App. Ct. 1972).
[457] *Id.*
[458] *Id.*
[459] *Id.* at 207.
[460] *Id.*
[461] *Id.*
[462] 489 N.E.2d 439, 440 (Ill. App. Ct. 1986).
[463] *Id.* at 440-41.
[464] *Id.* at 441.
[465] *Id.*
[466] *Id.*
[467] *Id.*
[468] *Id.*

him to believe that a dead body might be inside.[469] Inside the house, the officer discovered the body of a dog which had been dead for over a week.[470] The defendant was subsequently found guilty in the trial court of failure to dispose of a dead animal.[471]

The court held that the officer acted properly under the emergency doctrine.[472] Although the officer believed that the odor was coming from a dead body of a human, the uncertainty of the situation justified the entry.[473] This court also noted that the odor may have been caused by a person with "severe burns or other injuries."[474]

In contrast, in *State v. Epperson*, the court stated that the smell of decomposing flesh would clearly indicate that at least one victim was dead, thereby undermining the necessity for immediate police action.[475] Nevertheless, the court went on to uphold the entry in question on the basis that there were three missing persons in the case under review and, therefore, there was a possibility that one or more of the missing persons were still alive and in need of aid.[476]

In each of these cases, the court emphasized the uncertainty of the situation. In the abstract, it would appear that if the officers are certain that the victim is dead there would be no immediate need for aid and, therefore, no emergency. However, this degree of certainty is nearly impossible to attain. Consequently, a seemingly dead body normally qualifies as giving rise to an emergency even in circumstances where the victim died of natural causes. However, cases involving death by natural causes are less likely to involve the discovery of evidence of a crime and, consequently, those situations are less likely to be challenged in court. In addition, officers making warrantless entries based on the presence of a dead body would still be sub-

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[469] *Id.*
[470] *Id.* at 440.
[471] *Id.*
[472] *Id.* at 442.
[473] *Id.*
[474] *Id.*
[475] 571 S.W.2d 260, 264 (Mo. 1978).
[476] *Id.*

ject to the other restrictions of the emergency doctrine, such as its limited scope.

Up to now, this article has focused on police officers' actions in emergency situations involving potential threats to citizens' personal safety. The following categories involve both threats to people and property. In most of the published cases, the danger to property interests also carries a possible threat to life or limb. One example is a report of a burglary in progress.

i) Burglary in Progress

Most courts have applied the emergency doctrine in circumstances where police reasonably believe that a burglary is in progress or has recently occurred.[477] In this context, courts have upheld warrantless entries into both residential[478] and commercial premises.[479]

For instance, in *Bryant v. State*, the Supreme Court of Indiana stated that the emergency exception is operable in the context of a burglary because the "emergency circumstances surrounding a potential burglary justify the action."[480] In *Bryant*, police arrived at the defendant's residence after a neighbor reported hearing a home alarm system.[481] When police approached the house, they discovered the door was open and saw fresh pry marks on it.[482] The police entered and, although they found no one inside the residence, they discovered over 250

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[477] *See, e.g.*, Reardon v. Wroan, 811 F.2d 1025, 1029 (7th Cir. 1992) (In burglary in progress case in which the police entered a fraternity house without a warrant, the court held that police judgments regarding whether to obtain a warrant before entering a dwelling, where a crime has been reported to be in progress, should be accorded a degree of deference.); State *ex rel.* Zander v. District Court, 591 P.2d 656, 659 (Mont. 1979) (After police received a report of a burglary in progress, they entered the residence and did not find a burglar, but found marijuana plants being grown inside the residence; officers were reasonable in entering the dwelling to protect the owners property without a warrant, and resultant discovery of marijuana upheld).

[478] *See Zander*, 591 P.2d at 659.

[479] *See, e.g.*, People *ex rel.* Waller v. Seeberg Slot Machines, 641 N.E.2d 997 (Ill. App. Ct. 1994).

[480] 660 N.E.2d 290, 301 (Ind. 1995).

[481] *Id.*

[482] *Id.*

marijuana plants in plain view throughout the basement and the back yard.[483]

The defendant challenged the police entry of his residence as a Fourth Amendment violation.[484] The court said the police entry was permissible because the police reasonably believed that a burglary was in progress or had recently been committed.[485] The court was convinced that the neighbor's report of an alarm sounding, plus an open door with fresh pry marks, provided the police with a reasonable belief that a burglary was in progress.[486] Accordingly, the court stated that the police were entitled to search any area in which it was reasonable to believe a burglar might be hiding.[487] Interestingly, however, the court rejected the government's initial argument that the entry was justified because the police thought there was a person inside who needed immediate assistance.[488] In doing so, the court reasoned that no objective facts existed to support the officers' belief that a violent crime was being committed.[489]

In a similar case, *People v. Duncan*, the Supreme Court of California ruled that police could enter a residence to halt a burglary in progress under the emergency exception, which the court characterized as a variation of exigent circumstances.[490] In *Duncan*, a police officer responded to a call of a burglary in progress.[491] As the officer approached the defendant's residence, he saw a box containing a television and other items under an open window.[492] The officer found that the doors of the residence were locked, so he climbed through the open window to

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[483] *Id.* at 294.

[484] *Id.* at 300.

[485] *Id.* at 301.

[486] *Id.*

[487] *Id.*

[488] *Id.*

[489] *Id.* Although the court used the words "violent crime," it also stated that the entry was justified because the officers reasonably believed a burglary was in progress. Although burglary might be considered an inherently violent crime by some, in this context, the court meant that there were no facts to support a belief that a violent crime against a person was being committed.

[490] 720 P.2d 2, 5-6 (Cal. 1986).

[491] *Id.* at 3.

[492] *Id.* at 4.

see if the burglars were still inside.[493] Although the officer found none in the house, the officer did discover what was later identified as a lab used to manufacture methamphetamine.[494] The officer then called his sergeant to the scene to help identify the chemicals.[495] The officer procured a search warrant based on his and other officers' observations.[496] The defendant ultimately pled guilty to various drug charges.[497] The court upheld the responding officer's entry under the emergency doctrine[498] by finding that specific and articulable facts, including the report of a burglary in progress and the box containing a television sitting below an open window, supported the officer's belief that burglars remained inside the house.[499] The court also upheld the entry of the sergeant on the grounds that the responding officer had a reasonable suspicion that illegal activity was occurring in the apartment, but needed his sergeant to confirm that suspicion.[500]

In *People* ex rel. *Waller v. Seeburg Slot Machines*, police entered a vacant office building at approximately 8:00 A.M. after they had noticed a hole in an eight by eight foot window at the ground level.[501] The police decided to secure the building since the hole in the window was large enough to allow a person to enter the building, and the police were aware of a rash of burglaries in the area.[502] They entered through the window, and found no one on the first floor.[503] Once on the second floor, the officers observed two rooms full of slot machines, but found no indication of a burglary.[504] At 8:45 A.M., the caretaker of the building arrived and identified the defendant as the owner of

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[493] *Id.*
[494] *Id.*
[495] *Id.*
[496] *Id.*
[497] *Id.* at 4.
[498] *Id.* at 5-6.
[499] *Id.*.
[500] *Id.* at 7.
[501] *Seeburg Slot Machines*, 641 N.E.2d at 1004.
[502] *Id.*
[503] *Id.*
[504] *Id.* at 1000.

both the building and the slot machines.[505] The officers seized the machines since they are illegal gaming devices under state law.[506] These devices later became the subject of a civil forfeiture proceeding.[507]

The appellate court held that the emergency doctrine applied in this case because the break in the window was large enough to allow a person to enter the building, which the officers knew had been vacant for a number of years, and because of the rash of recent burglaries in the area.[508] The court rejected the defendant's argument that no legitimate emergency existed in the absence of screams for help or signs of rocks or blood around the broken window.[509] The court noted that not all police entries into commercial premises during non-business hours are justified under the emergency doctrine,[510] but found the officers' belief that an immediate threat to person or property might exist[511] to be reasonable in light of the particular facts of the case.[512] Thus, the officers were justified in entering the building to secure the premises, and lawfully seized the slot machines which were in plain view.[513]

A possible burglary in progress presents both community caretaking and law enforcement concerns concurrently. Obviously, it is possible that the victim of a burglary may be present

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[505] *Id.*

[506] *Id.*

[507] *Id.* at 1002. The court noted that the exclusionary rule applied notwithstanding the fact that this is a civil forfeiture proceeding. *See* Plymouth Sedan v. Pennsylvania, 380 U.S. 693, 696 (1965) (exclusionary rule applicable in civil forfeiture hearing).

[508] People *ex rel.* Waller v. Seeburg Slot Machines, 641 N.E.2d 997, 1004 (Ill. App. Ct. 1994).

[509] *Id.*

[510] *Id.* The court stated that the police entered during non-business hours. The entry took place on a Saturday at around 8:00 A.M. The court does not specify whether a vacant building ever has business hours, or in any event, how business hours are determined for a particular commercial building.

[511] *Id.* Although the court used the language "threat to person or property," it seemingly upheld the officers' entry solely to protect the owner's property interests, since there is no indication that anyone's safety was in danger. This is especially true since the building had been vacant for years and the entry was during non-business hours. Moreover, the entry was prompted by a broken window rather than a report or observation of suspicious persons.

[512] *Id.*

[513] *Id.* at 1005.

and endangered by the burglar. In addition, substantial loss of property often occurs as a result of a burglary and, thus, the threat to the burglary victim's property justifies the immediate police action as well. In addition, the interest in the possible immediate apprehension of the perpetrator who may remain at the scene is an important law enforcement goal. Thus, if police were unable to investigate the scene of a possible burglary until the property owner later provides police authorization to enter the premises to investigate, the burglar still on the scene who hides until after the police depart and before the property owner returns would most likely successfully escape with his bounty and continue to rob the homes and businesses of future victims. Expecting the police to merely keep the house under surveillance to guard against, on the one hand, the possible escape of the burglar, and, on the other hand, the invasion of the privacy of the absent property owner would involve a waste of police resources that no court would expect.

j) Explosion or Fire in Progress

An explosion or fire in private premises is an obvious example of an emergency which permits police and firefighters to take action necessary to protect the premises and persons endangered by the fire or explosion.[514] While legitimately on the premises to extinguish a blaze, these officials may discover evidence of arson[515] or evidence of other criminality.[516]

The United States Supreme Court case of *Michigan v. Tyler*[517] illustrates the parameters of appropriate government control and investigation of a fire. In that case, firefighters were dispatched around midnight to a furniture store to extinguish a fire.[518] While fighting the fire, firefighters came across two containers of flammable liquid and summoned the police, who

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[514] *See, e.g.*, Steigler v. Anderson, 496 F.2d 793, 797 (3rd Cir. 1974) (fire created emergency).

[515] *See, e.g.*, Michigan v. Tyler, 436 U.S. 499, 500 (1978).

[516] *See, e.g.*, Mazen v. Seidel, 940 P.2d 923, 925 (Ariz. 1997) (firefighter discovery and police seizure of marijuana upheld).

[517] 436 U.S. 499 (1978).

[518] *Id.* at 501.

seized the containers as possible evidence of arson.[519] Police and firefighters then briefly scanned the rest of the building in an attempt to determine the exact cause of the fire.[520] Due to darkness and smoke, the officials were not able to establish the fire's origin and, consequently, evacuated the premises around 4:00 A.M. after verifying that the fire was completely extinguished.[521]

Later that morning, police and firefighters re-entered the premises without a warrant several times to further investigate the cause of the fire.[522] During those entries, police seized pieces of a rug and bits of the stairway as evidence suggestive of a fuse trail.[523] More than three weeks later, police again made repeated visits to the scene to investigate and to obtain evidence against the defendants, the owners of the store, who were charged with conspiracy to commit arson.[524] The police had neither a warrant nor consent for any of these various entries.[525] At trial, the defendants moved to suppress all evidence obtained after the initial entry as the fruits of illegal warrantless searches.[526]

The Supreme Court noted that a fire in progress, of course, was an obvious emergency permitting immediate governmental action.[527] However, the Court pointed out that owners of fire-damaged premises, whether commercial or residential, which are not completely destroyed, continue to have a reasonable expectation of privacy in their premises even after the exigency of the fire has passed.[528] Thus, the Fourth Amendment is applicable in this context, and government officials must obtain a warrant to conduct a search of the premises for origin of the fire or

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[519] *Id.* at 501-02.
[520] *Id.* at 502.
[521] *Id.*
[522] *Id.*
[523] *Id.*
[524] *Id.* at 503.
[525] *Id.* at 502-03.
[526] *Id.* at 503.
[527] *Id.* at 509.
[528] *Id.* at 505-06.

evidence of arson in the absence of either consent or an applicable exception to the warrant requirement.[529]

In *Tyler*, the Court not only stated that the emergency exception unquestionably allowed officials to immediately enter a burning building to extinguish a fire,[530] but also ruled that police and fire officials may remain on the premises for a reasonable time after the fire has been extinguished for the purpose of investigating the cause of the blaze.[531] In other words, officials may remain to gain assurance that the fire will not rekindle. Finally, what constitutes a reasonable time is decided based on the various circumstances at hand.[532] Examining the facts of the case, the Court held that since the subsequent entries that day occurred only four hours after fire officials and police abandoned their investigation at 4:00 A.M. due to darkness and smoke, these entries were no different than if the officials had remained on the premises until the smoke cleared and daylight dawned in order to complete their investigation.[533] Thus, the early morning re-entries were reasonable in light of the police and firefighters' duty to determine the cause of the fire.[534] All later entries, however, were "clearly detached from the initial exigency and warrantless entry,"[535] and all evidence gained during those entries was deemed inadmissible because the police failed to obtain consent or a valid administrative or criminal search warrant, or to satisfy an applicable warrant exception.[536]

While the Supreme Court established the "reasonable time afterwards" extension of the emergency doctrine in the context

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[529] *Id.* at 504-06. The Court listed as government officials law enforcement officers, health and fire officials, and building inspectors.

[530] *Id.* at 509.

[531] *Id.* at 510.

[532] *Id.* at 510 & n.6.

[533] *Id.* at 511.

[534] Moreover, the search was limited to sifting through the rubble for signs of the cause of the fire. *Id.* at 502.

[535] *Id.* at 511. An administrative search warrant is required for entries to examine origin of fire while a criminal search warrant is required when searching for evidence of arson.

[536] *Id.*

of subsequent entries,[537] other courts have applied it to decide the reasonableness of the duration of the *original* entry. For example, in *People v. Harper*,[538] firefighters were called to defendant's residence to extinguish a fire. After the fire was extinguished, the firefighters determined that a smoldering mattress caused the fire and removed it.[539] While removing the mattress, one of the firefighters noticed a bucket containing what he thought was marijuana.[540] He contacted the police, who arrived shortly thereafter and seized the contraband.[541]

The Supreme Court of Colorado relied on *Tyler*, finding that the firefighters entered the premises pursuant to an emergency and were thereby entitled to remain for a reasonable time to investigate the cause of the fire.[542] Since the marijuana was discovered in plain view during the investigation of the cause of the fire, it was held to be a valid seizure occurring within a reasonable time after the fire was extinguished.[543] Thus, even though *Harper* uses the "reasonable time afterwards" language from *Tyler*, it really seems to be a straightforward application of the emergency exception since the evidence was discovered in plain view during the original entry.

In *People v. Van Middlesworth*,[544] the court addressed the scope of legitimate entry and search when the fire only extended to one room of the house. In this case, firefighters extinguished the fire before it spread beyond the living room.[545] They then proceeded to open windows throughout the house for ventilation.[546] While doing so, one of the firefighters noticed marijuana in plain view in the defendant's bedroom.[547] Soon

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[537] The "reasonable time afterward" component of the emergency exception is fully discussed in the section dealing with the scope of the emergency exception. *See infra* Part III.C.3.

[538] 902 P.2d 842 (Colo. 1995.

[539] *Id.* at 843.

[540] *Id.*

[541] *Id.* at 844.

[542] *Id.*

[543] *Id.* at 845.

[544] 533 N.E.2d 1119 (Ill. App. Ct. 1988).

[545] *Id.* at 1120.

[546] *Id.*

[547] *Id.*

thereafter, a police officer entered the residence in search of the fire chief and noticed drug paraphernalia in the defendant's bedroom.[548] The court upheld the seizure since the officer entered the home pursuant to his duties at the fire scene and had noticed the contraband in plain view.[549]

Similarly, some court decisions involve a police response to a report of an explosion. For example, in *United States v. Boettger*, the police were called to investigate an explosion at the defendant's residence.[550] The defendant informed the police that he was making a firecracker in his apartment when the chemical explosion occurred.[551] The defendant, who had lost a hand and a couple of fingers as a result of the explosion, was taken to the hospital.[552] The police entered his apartment and determined that the explosion happened in the kitchen.[553] They also noticed a crock pot with containers of clear liquid, a device with coiled wires that looked like a still, and what appeared to be a bomb in a glass bottle.[554] Accordingly, the officers evacuated the apartment.[555] Since the local police were unable to determine the extent of the danger posed by the mixture of chemicals in the apartment, they called the state police, who arrived within two hours.[556] Thereafter, all three surrounding apartment buildings were evacuated.[557]

Still unsure about the potential for an explosion, authorities at the scene called agents from the Federal Bureau of Alcohol, Tobacco and Firearms (ATF) for assistance, who arrived the next day, but were unable to dismantle the devices.[558] Finally, an explosives expert with over twenty years of experience was flown

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[548] *Id.*
[549] *Id.* at 1121.
[550] 71 F.3d 1410, 1412 (8th Cir. 1995).
[551] *Id.*
[552] *Id.*
[553] *Id.* at 1412.
[554] *Id.*
[555] *Id.*
[556] *Id.*
[557] *Id.*
[558] *Id.* at 1413.

in from another jurisdiction to neutralize the explosives.[559] He arrived the evening after the explosion.[560] Thus, in an effort to prevent another explosion, several officials from different governmental agencies entered the apartment over the course of the next two days.[561] Once the officials removed the explosives, the defendant's neighbors were allowed to return.[562] The defendant was charged with making and possessing twenty-five explosive devices, and possessing one unregistered firearm silencer.[563] He challenged all of the entries as Fourth Amendment violations.[564]

The Eighth Circuit upheld the entries under the emergency doctrine, relying on the premise that government officials can take reasonable measures to alleviate a continuing danger.[565] The court began by noting that the defendant's experimentation with explosives in his apartment diminished his expectation of privacy because of the danger it created for others.[566] It also emphasized that each entry was made to ascertain the cause of the explosion and to prevent any further explosion.[567] Moreover, once an agent arrived who had the expertise necessary to neutralize the chemicals and devices, they were removed and no further entries were made.[568] The court here equated the danger in this situation to that of the danger of a fire rekindling after it is extinguished,[569] and held that all of the entries were justified under the emergency exception because they all oc-

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[559] *Id.*

[560] *Id.*

[561] *Id.*

[562] *Id.*

[563] *Id.*

[564] *Id.*

[565] *Id.* at 1414 ("The reasonableness of a search will depend on 'the circumstances of the particular [hazard] and generally will involve more than the lapse of time or the number of entries and re-entries.'") (quoting Michigan v. Clifford, 464 U.S. 287, 298 n.9 (1984)).

[566] *Id.*

[567] *Id.* at 1415.

[568] *Id.*

[569] *Id.* at 1416.

curred while the materials posed a continuing threat to the public.[570]

k) Presence of Explosive Devices

Similar emergency situations occur when police are informed of the whereabouts of dangerous explosive devices.[571] In *People v. Higbee*, the Supreme Court of Colorado determined that a colorable claim of emergency existed when police had probable cause to believe the defendant had taken dynamite into an apartment complex.[572] Prior to the search, the police had arranged an undercover drug transaction between the defendant and an informant, who had worked for the police on several prior occasions.[573] The drug deal took place in the defendant's car, which was under police surveillance.[574] Afterward, the informant told the police that she saw a toggle switch and two red tubes in the defendant's car, and that when she questioned him, he replied that the tubes were dynamite.[575] He further stated that the toggle switch could be set to detonate the dynamite if anyone tampered with his car, or that he could set it to detonate after a thirty-second delay, allowing himself time to escape before the explosion.[576]

Based on this information, the police obtained an arrest warrant for the defendant. The next day, the police located the defendant's car at an apartment complex and observed the defendant and some other persons carrying packages from the car into one of the apartments.[577] The police then promptly arrested the defendant and called the bomb squad.[578] The bomb

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[570] *Id.* at 1415-17.

[571] *See, e.g.*, People v. Meddows, 427 N.E.2d 219 (Ill. App. Ct. 1981) (dynamite accessible to playing children posed emergency; resultant seizure and murder conviction upheld).

[572] 802 P.2d 1085, 1091 (Colo. 1990).

[573] *Id.* at 1087.

[574] *Id.*

[575] *Id.*

[576] *Id.*

[577] *Id.*

[578] *Id.*

squad instructed the police to evacuate the area.[579] At this time, the defendant denied having possession of any dynamite and also denied making the statements to the informant.[580] He explained that the toggle switch was used to bypass a short circuit.[581] An officer from the bomb squad then searched the defendant's car and verified that the toggle switch bypassed a short circuit in the ignition.[582] However, he found no explosives in the car.[583] The officers, concerned that the defendant had moved the explosives into the apartment complex, proceeded to search the apartment.[584] Within the premises were a military hand grenade simulator and controlled substances, but no explosives.[585] The defendant challenged this entry as a Fourth Amendment violation.[586]

The court began its analysis by stating that probable cause and exigent circumstances must be present before the police could lawfully enter the residence without a warrant.[587] The court defined probable cause as reasonable grounds to believe that the item sought is in the place to be searched.[588] Further, it explained that exigent circumstances exist where there is "a colorable claim of an emergency threatening the life or safety of another."[589] Moreover, the court added that an emergency existed when there was an immediate crisis in the place to be searched and there was a probability that police assistance would aid in alleviating the crisis.[590]

In this case, the court found that the officers reasonably believed that the defendant had dynamite based on the facts supplied by the informant.[591] The court noted the officer's

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[579] *Id.*
[580] *Id.*
[581] *Id.*
[582] *Id.*
[583] *Id.*
[584] *Id.*
[585] *Id.* at 1087-88.
[586] *Id.* at 1088.
[587] *Id.*
[588] *Id.* at 1089.
[589] *Id.* at 1090 (quoting People v. Malczewski, 744 P.2d 62, 66 (Colo. 1987)).
[590] *Id.*
[591] *Id.* at 1089.

expertise in ascertaining the validity of bomb threats, that the informant had proven reliable on prior occasions, and that her information was corroborated when an officer found a toggle switch in the car.[592] The court stated that when the officers searched the defendant's car and found no explosives, the officers had probable cause to believe that the dynamite had been moved to the apartment.[593] This finding was supported by the fact that the police observed the defendant carrying parcels into the apartment approximately thirty minutes before his arrest.[594] Finally, the court found that the presence of the dynamite posed a grave threat to persons in the area.[595] All of these facts together established that the entry was justified by the emergency doctrine.[596]

Similarly, in *People v. Kane*, the court found that officers had reasonable grounds to believe an emergency existed involving explosives.[597] In *Kane*, a landlord notified police when she found a box of explosives in the garage of her apartment building.[598] The police arrived and ordered the area evacuated.[599] Next, they questioned the defendant's roommate.[600] The roommate explained that he had seen dynamite in the defendant's bedroom closet two weeks earlier, but was unsure if the defendant had removed it.[601] The roommate also told police that in their apartment, the defendant had weapons, ammunition, and newspaper clippings reporting bombing incidents.[602] Moreover, the roommate identified the box in the garage as similar to the one he saw in the defendant's closet.[603] In the meantime, the bomb squad determined that the box contained

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[592] *Id.*
[593] *Id.*
[594] *Id.*
[595] *Id.* at 1091.
[596] *Id.*
[597] 573 N.Y.S.2d 729, 730 (N.Y. App. Div. 1991).
[598] *Id.*
[599] *Id.*
[600] *Id.*
[601] *Id.*
[602] *Id.*
[603] *Id.*

blasting caps, dynamite, and an accelerant which made the situation extremely dangerous and unstable.[604] Police "conducted a cursory, olfactory search for dynamite" after the roommate gave consent, and observed the weapons and newspaper clippings as described.[605] The apartment was secured, but nothing was seized.[606] Police returned later and conducted a more thorough search, pursuant to a warrant, during which they seized the above items and additional explosives.[607] The defendant challenged the entries and searches, but the appellate court easily found that the officers acted pursuant to a reasonable belief that an emergency was at hand.[608]

l) Presence of Ether or Other Volatile Chemicals

Some courts have also held that the emergency exception allows police to conduct a warrantless search upon detecting potentially explosive chemicals, including ether, which is often used in manufacturing or processing narcotics. For example, in *People v. Clements*, the Supreme Court of Colorado used the emergency doctrine to uphold an automobile search, which was primarily based on the odor of ether emanating from an automobile.[609] In this case, an officer observed the defendant put something in the trunk of a car, turn and look at the officer, slam the trunk shut, and then hurry inside.[610] As the officer rode by the trunk, he detected a strong odor of ether.[611] Further, he was aware that the defendant had a history of manufacturing narcotics.[612] The officer entered the building to question the defendant, who admitted that the vehicle was his, but denied that any ether was in the trunk.[613] When the officer asked

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[604] *Id.*
[605] *Id.*
[606] *Id.*
[607] *Id.*
[608] *Id.* Since the search was validated under the emergency exception, the court did not consider whether the roommate's consent was valid. *Id.*
[609] 661 P.2d 267, 271-72 (Colo. 1983).
[610] *Id.* at 268-69.
[611] *Id.* at 269.
[612] *Id.*
[613] *Id.*

to search the car, the defendant refused and indicated that he wanted to contact his lawyer.[614] Shortly thereafter, the defendant left for that purpose.[615]

As the officer waited by the car, another individual soon approached the vehicle and attempted to move it.[616] The officer demanded the keys and opened the trunk.[617] He found a bottle of ether, lab equipment, and other chemicals used to manufacture narcotics.[618] The car was subsequently impounded and searched pursuant to a warrant, during which narcotics were found in the glove compartment of the automobile.[619] During the defendant's trial for several narcotics violations, the trial court suppressed the evidence seized during the search, ruling that the officer used the emergency exception as a pretext for opening the trunk that tainted the subsequent search of the car.[620]

The Supreme Court of Colorado reversed, ruling that the officer acted reasonably to avert a possible public safety hazard, and sustained the search under the emergency exception.[621] It emphasized the reasonableness of the officer's belief that the ether was unstable and could unexpectedly explode.[622] These beliefs were corroborated by expert testimony that an explosion could occur from minor jostling, heat, sparks, or even radio transmissions.[623] The court also noted that the car was near an occupied apartment building, and that the incident occurred on a hot summer evening.[624] Moreover, the court stated that the officer acted reasonably in choosing to tow the car and dispose

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[614] *Id.*
[615] *Id.*
[616] *Id.*
[617] *Id.*
[618] *Id.*
[619] *Id.* at 269-70.
[620] *Id.* at 270.
[621] *Id.* at 271.
[622] *Id.*
[623] *Id.*
[624] *Id.*

of the chemicals later, although the officer could also have called a bomb squad to take care of the matter at the scene.[625]

In a similar case a neighbor of the defendant called the police when he was awakened at approximately 12:30 A.M. by what he identified as a chemical odor.[626] Following a forty-five minute drive to the location, which was situated in a remote area, the responding officers recognized the unusual smell as that of ether.[627] The officers verified that the smell was coming from the defendants' cabin and summoned the fire department.[628] Two and one-half to three hours later, the officers entered the cabin with their guns drawn.[629] During a search of the premises, they located and arrested three individuals.[630] Once the suspects were in custody, the police re-entered the premises, aided by the firefighters, and took precautions to alleviate the existing fire hazard.[631] While doing so, the officers found cocaine, as well as chemicals and equipment used to manufacture narcotics.[632]

The court found that the officers' beliefs, namely, that the cabin constituted a fire hazard and that narcotics were being manufactured on the premises, were reasonable in light of the strong chemical odor.[633] In addition, the court emphasized the odor coming from the cabin,[634] the time of day, the area in which the cabin was located, and the possible lack of immediate availability of firefighting resources.[635] Accordingly, the court

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[625] *Id.* This illustrates the familiar doctrine that law enforcement officials need not employ the least restrictive means of accomplishing a result. Illinois v. LaFayette, 462 U.S. 640, 647-48 (1983) (police not required to use least intrusive alternative during inventory of defendant's personal effects during police booking of defendant following defendant's arrest).

[626] United States v. Echegoyen, 799 F.2d 1271, 1273 (9th Cir. 1996).

[627] *Id.* at 1273-74.

[628] *Id.* at 1274.

[629] *Id.* at 1279.

[630] *Id.* at 1274.

[631] *Id.*

[632] *Id.*

[633] *Id.* at 1278.

[634] The opinion does not make clear exactly what kind of activity was going on in the cabin.

[635] *Id.* at 1278-79.

ruled that "exigent circumstances" existed to justify the officers' entry.[636]

This court included the emergency doctrine within the definition of exigent circumstances, when the concepts actually provide alternative arguments.[637] Instead of combining the two doctrines, the court could have based its holding on the emergency exception *if* convinced not only that the officers reasonably believed an emergency existed, but also that the motive and scope elements of the test set out in this article were met.[638] Instead, the court confused the issues needlessly by focusing on exigent circumstances.

The Ninth Circuit distinguished *Echegoyen* in a later case where it declined to apply the emergency exception in a situation involving highly volatile chemicals.[639] In *United States v. Warner*, a landlord was making repairs to the premises he rented to the defendant when he noticed a box of chemicals in the garage.[640] The landlord made a list of the chemicals and sought the advice of a chemist who concluded that they posed no danger.[641] Approximately four weeks later, the landlord returned to mow the lawn, when he noticed a pungent chemical smell.[642] Concerned because of the high temperature that day, he called the police but stated that the situation was not an emergency.[643]

Two hours later, an officer arrived.[644] The landlord proceeded to show the officer the list of chemicals, which included

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[636] *Id.* at 1279.

[637] *Id.* at 1278. *See supra* Part II.C for a discussion of a court's unnecessary reliance on law enforcement rather than community caretaking principles.

[638] It seems unlikely that the officers' actions would pass muster under the three prong test suggested in this article. Specifically, the officers would likely fail to satisfy the motive prong because of the six hour delay, after which they entered with their guns drawn. These facts suggest an intent to investigate criminal activity, namely manufacturing narcotics, more than an intent to prevent a chemical explosion. *See infra* Part III.B for a discussion of the importance of an officer's motivation.

[639] *See* United States v. Warner, 843 F.2d 401 (9th Cir. 1988).

[640] *Id.* at 402.

[641] *Id.*

[642] *Id.*

[643] *Id.*

[644] *Id.*

ether and formaldehyde.[645] The officer was aware that these chemicals were used to manufacture narcotics, and asked to enter the garage.[646] After visually inspecting the chemicals, the officer called the fire department and a narcotics officer.[647] After a search, the officials seized several items from the garage and the house.[648] The defendant challenged the entry as a violation of the Fourth Amendment, and the Ninth Circuit agreed.[649]

The court emphasized that no emergency existed based on the facts known to the officer at the time of the entry. The court distinguished this case from *Echegoyen* in which the officers called the fire department and were informed of the danger *prior* to their entry.[650] In contrast, here, the officer was aware that the landlord discovered the chemicals at least two weeks earlier and was unaware of any explosive potential before he entered the premises.[651] In addition, the court stated that "there was no basis for believing that any illicit activity was actually taking place on the premises; no occupants were present"[652] and "similarly no basis for believing that suspects or evidence might disappear."[653] Thus, the court held that the search was not justified under the emergency doctrine because the facts known to the officer at the time he entered did not give rise to a reasonable belief that an emergency existed.[654] One judge dissented, stating that since the officer was aware of the explosive nature of the chemicals, the entry was justified to alleviate the threat posed to public safety.[655]

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[645] *Id.*
[646] *Id.*
[647] *Id.*
[648] *Id.*
[649] *Id.* at 404.
[650] *Id.*
[651] *Id.*
[652] *Id.*
[653] *Id.*
[654] *Id.*
[655] *Id.* at 405-06 (Brunetti, J., dissenting).

3. Remaining Ambiguities: Stretching "Immediacy" and Protection of "Mere Property Concerns"

As in any working model, there are areas in emergency exception analysis which continue to raise questions. For example, while this prong of the three-factor test proposed in this article suggests there is an element of immediacy required in situations where the emergency doctrine is applied,[656] this requirement is not always strictly enforced. Immediacy should not be construed as a set time period within which the officer must act, rather, it should be assessed in the context of the factual situation. As mentioned above, depending on the type of situation the officer encounters, what is considered an immediate response may vary widely. Generally, officers must make their initial warrantless entry into the home or commercial building immediately after realizing an emergency is at hand. Under some circumstances though, courts have allowed police to delay their initial entry. In these cases, police may be facing either an ongoing emergency, such as a kidnapping, or gathering facts to determine whether assistance is truly needed, such as in a missing persons case. If there is a reasonable explanation for the officer's delay, the entry, even though delayed, will most likely be construed as lawful under the emergency exception.[657]

In addition, there remains little question as to whether the emergency exception model proposed in this article can be used solely for the protection of property. While it is clear that the emergency exception is properly used for the protection of life, not all jurisdictions have explicitly extended the exception to the protection of any property interest standing alone. The United States Supreme Court's dictum in *Michigan v. Tyler*, that a "burning building clearly presents an exigency of sufficient proportions to render a warrantless entry 'reasonable,'" strongly implies at least significant property interests are protected.[658]

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[656] *See* United States v. Bute, 43 F.3d 531, 537-39 (10th Cir. 1994) (stressing importance of "immediacy" requirement).

[657] *See, e.g.*, U.S. v. Echegoyen 799 F.2d 1271 (9th Cir. 1986) (court upheld warrantless entry under exigent circumstances despite the fact that officers were on the premises for approximately two and one-half to three hours before they entered the home).

[658] Michigan v. Tyler, 436 U.S. 499, 509 (1978).

More importantly, it should be noted that while this issue may raise interesting theoretical questions about the appropriateness of government action where protection of property is the sole basis of an emergency search, these questions raise very little practical application concern because almost every situation involving property addressed in the appellate decisions can also be justified as involving the protection of life. Further, some of those situations may be best resolved under the traditional non-emergency exigent circumstances analysis.

One case applied the emergency exception in the context of protecting the lives of animals.[659] In *State v. Bauer*, a Humane Society officer investigated, over the course of about one year, repeated complaints about conditions on the defendants' farm.[660] Then, in March, 1984, the owner of the property called and asked the Humane Society officer for assistance in removing a horse that had recently died on the property.[661] The Humane Society officer arranged for an equine specialist, Dr. Cook, to meet her and a police officer at the property.[662] When they arrived, they found the dead horse in the defendants' driveway.[663] Dr. Cook determined that the horse had died of starvation.[664]

The officials then proceeded to the barn where they found other horses standing in solid manure, without feed or bedding.[665] Dr. Cook determined that the overall condition of the horses was very unhealthy and two were near death.[666] The Humane Society officer seized the horses and transported ten of them to a nearby ranch the following day.[667] The remaining two horses were moved one day later.[668] The defendants were convicted of mistreating animals, failing to provide sufficient food

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[659] State v. Bauer, 379 N.W.2d 895, 896 (Wis. Ct. App. 1985).
[660] *Id.*
[661] *Id.*
[662] *Id.*
[663] *Id.*
[664] *Id.* at 897.
[665] *Id.*
[666] *Id.*
[667] *Id.*
[668] *Id.*

and water to confined animals, and violating minimum space and sanitation requirements for animals.[669] The defendants claimed that all information about the animal abuse was gained in violation of the Fourth Amendment and that the trial court erred in refusing to suppress it.[670]

The court of appeals held that viewing the dead horse in the driveway did not amount to a search because the defendants had no expectation of privacy in a common area that was generally made accessible to visitors.[671] Further, the government argued that the officials were justified in entering the barn under the emergency doctrine.[672] The court agreed, stating that rendering aid to relatively helpless animals was a sufficient interest to invoke the emergency exception.[673] The court concluded that the Humane Society officer reasonably believed that other horses were in immediate jeopardy, emphasizing that the officer was familiar with the defendants' previous violations, witnessed the autopsy of the dead horse, and viewed other horses from where she stood in the driveway.[674] Thus, the court was convinced that she acted reasonably in response to a compelling need to "stop the ongoing suffering of the animals."[675]

B. PRONG TWO: POLICE MUST BE MOTIVATED BY AN INTENT TO AID

The second prong, the one which lies at the heart of the emergency doctrine, is motivation. This means that an officer must act primarily for the purpose of achieving a community caretaking function, rather than pursuing a law enforcement objective.[676] The officer should be motivated by a good faith desire to aid a person in need, prevent harm, or to protect signifi-

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[669] *Id.*

[670] *Id.*

[671] *Id.* at 898.

[672] *Id.*

[673] *Id.* at 898-99.

[674] *Id.*

[675] *Id.* at 899.

[676] Cady v. Dombrowski, 413 U.S. 433, 441 (1973); Commonwealth v. Waters, 456 S.E.2d 527, 530 (Va. Ct. App. 1995).

cant property interests.[677] While the second prong focuses on the officer's subjective intent, this action, of course, must also be objectively reasonable in order to satisfy prong one of the test proposed in this article. This motivational requirement distinguishes the emergency exception from most other exceptions to the warrant requirement where the officer's primary focus is on crime solving, such as when the officer acts to preserve evidence or catch a fleeing suspect. While it is unnecessary that this community caretaking motive be the only motive in an officer's mind at the time of the warrantless entry, it is essential that the desire to aid or protect be a primary, or at least a substantial, part of the officer's good faith subjective motivation. It is quite conceivable that an officer engaging in a warrantless search may simultaneously have dual motives for his or her actions, but as long as one of these motives corresponds with an objectively reasonable emergency, as defined in the first prong, then the emergency doctrine is applicable.

The following hypotheticals will illustrate the distinction between the objective emergency requirement of the first prong and the subjective motivation requirement of the second prong. A police officer on routine patrol hears a bloodcurdling scream coming from inside a private residence. Objectively this qualifies as an emergency. It is reasonable for the officer to believe that someone inside is in immediate need of assistance. However, this objective finding alone is not enough to sidestep the warrant requirement. 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? Consider the following thoughts of the officer: 1) "Someone must be hurt, I need to help," 2) "Someone must be hurt, I need to help the victim and arrest the attacker," or 3) "There is always someone screaming inside that house. I'm sure nothing's wrong, but now is my chance to confirm my suspicions that drug deals are going on inside." An officer acting under the first motivation is acting properly under the emer-

[677] People v. Mitchell, 347 N.E.2d 607, 609-10 (N.Y. 1976). *See infra* Part III.D for a complete discussion of this case.

gency doctrine. The second motivation, which is a dual community caretaking/law enforcement motive, is most likely also acceptable. The third motivation is clearly not a proper use of the emergency doctrine. The officer needs to be actually engaged in community caretaking, not merely using an emergency situation as a pretext for other motives.

However, at least one court has opted to disregard what this author considers to be the central component of the emergency doctrine. In *State v. Carlson,* the Iowa Supreme Court held that it would no longer apply the motivation prong in emergency doctrine analysis.[678] In the case, officers responded to a missing person report from a daughter who was concerned about the safety of her mother.[679] The mother had been living with the defendant, who had previously abused her.[680] The daughter grew concerned when she did not hear from her mother for two days and the defendant offered her conflicting explanations about the mother's whereabouts.[681] In response to the daughter's report, police went to the defendant's house to investigate.[682] The police searched the residence and found the defendant asleep in his bedroom and the mother's body in the basement.[683] The defendant was arrested and charged with murder.[684] The police then secured a warrant and made a complete search of the house.[685] The defendant moved to suppress the results of the initial warrantless entry.[686] The district court upheld the search and defendant appealed.[687]

The Supreme Court of Iowa denied the defendant's motion based on the emergency exception.[688] The court found that under the circumstances, an objectively reasonable emergency ex-

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[678] 548 N.W.2d 138, 141-42 (Iowa 1996).
[679] *Id.* at 139.
[680] *Id.*
[681] *Id.*
[682] *Id.*
[683] *Id.* at 140.
[684] *Id.*
[685] *Id.*
[686] *Id.*
[687] *Id.*
[688] *Id.* at 143.

isted.[689] While the court acknowledged that the actions of the officers would also meet the subjective motivational prong previously used in emergency exception cases, the court decided that this part of the analysis should be abandoned.[690] The court decided to rely solely on an objective test by analogizing to the objective tests employed in Iowa in other contexts, such as in vehicle impoundment and pretextual arrests.[691] The court further stated that "the officers' subjective thinking processes are not satisfactorily susceptible of proof or disproof."[692] While it is true that it may not always be easy to prove the mental state of another person, this is no reason to dismiss an element so essential to the emergency doctrine and that which makes it a unique concept. There are numerous other instances where courts are required to make similar judgments of a person's subjective thinking processes, such as in cases requiring a factual finding of "specific intent" to commit a crime[693] or a "good faith" belief that certain conduct is legal.[694]

Notwithstanding *Carlson*, the following are some examples of cases from other jurisdictions where the motivation prong was a key factor in the emergency doctrine analysis. In *People v. Meddows*, the court upheld a police seizure of dynamite, which later was used by the state to connect a defendant to a bombing-murder, where the seizure arose from the police officer's concern about the presence of children in defendant's trailer-home who might be endangered by dynamite in the same home.[695] In *Meddows*, the defendant and his step-father were hunting along a creek bed, when a dynamite-encased booby trap exploded and killed the step-father.[696] While defendant was being questioned

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[689] *Id.*

[690] *Id.* at 141-42.

[691] *Id.*

[692] *Id.* at 141.

[693] *See, e.g.*, People v. McManus, 555 N.E.2d 391, 399 (Ill. App. Ct. 1990) (circumstantial evidence supported specific intent required for theft by deception); 1 JOHN DECKER, ILLINOIS CRIMINAL LAW: A SURVEY OF CRIMES AND DEFENSES, §2-29 (2d ed. 1995) (describing Illinois courts' reliance on circumstantial evidence in assessing proof of defendant's criminal intent).

[694] *See, e.g.*, United States v. Leon 468 U.S. 897 (1984).

[695] People v. Meddows, 427 N.E.2d 219, 222-23 (Ill. App. Ct. 1981).

[696] *Id.* at 220.

about the incident two days later at the sheriff's office, a relative of defendant and his deceased step-father advised the authorities that "Mr. Meddows" had dynamite and blasting caps in the home where defendant and the step-father had lived.[697] Also, the relative revealed that small children, who were relatives of the step-father, were staying in the home while in town to attend the victim's funeral.[698] This information mistakenly suggested that the dynamite belonged to the step-father rather than the defendant.[699] Thereafter, officials retrieved the explosives which, in fact, belonged to the defendant and implicated him in the murder of his step-father.[700]

The court upheld the official's warrantless entry because of the emergency circumstances created by the presence of the highly dangerous blasting caps and dynamite in the same home as the small children, who might accidentally detonate them.[701] The court held that if police reasonably believe an emergency exists, their warrantless entry into private premises is justified if its "purpose—to offer assistance to a citizen possibly imperiled, not to obtain evidence of a crime" is the official's goal.[702] Here, the official who learned of the presence of the dynamite "testified unequivocally that the purpose of searching the trailer was to protect the young children in it from possible harm."[703] Moreover, when he learned about the explosives in defendant's home, he assumed the dynamite belonged to the victim, rather than the defendant, which corroborated the conclusion that the search was not motivated by seizing evidence implicating defendant in criminality.[704]

In *Reynolds v. Commonwealth,* the court upheld a warrantless entry into a private residence in circumstances where the officer had both a community caretaking motive and a law enforce-

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[697] *Id.*
[698] *Id.*
[699] *Id.*
[700] *Id.* at 221.
[701] *Id.* at 222.
[702] *Id.* at 221-22.
[703] *Id.* at 222.
[704] *Id.*

ment motive.[705] In *Reynolds*, an officer discovered stolen items and guns in a stopped vehicle.[706] The driver of the vehicle confessed that he had just stolen the items in a burglary of the defendant's residence.[707] The officer arrested the driver and then took the driver to the defendant's residence to investigate.[708] The officer suspected that the driver may have injured or killed someone during the course of the burglary.[709] In addition, the officer wanted to secure evidence of the illegal breaking and entering inside the house.[710] The driver-burglar showed the officer the screen porch where he had entered the defendant's home.[711] The burglar also pointed out twenty-nine marijuana plants growing there.[712] The officer contacted vice investigators who seized the plants.[713] The officer then waited for the defendant's wife to return and gained her consent to a complete search of the house.[714] During this search, the officer saw cocaine in plain view.[715] The defendant and his wife were charged with the illicit manufacture of marijuana and cocaine possession.[716]

The court upheld the trial court's denial of the defendants' motions to suppress the drug evidence by using what it called the "emergency doctrine."[717] The court found that the officer was acting in good faith in an effort to possibly aid the victims of the burglary and secure their property.[718] Although the officer was also acting under a law enforcement motivation in his intention to preserve the evidence of the breaking and entering, the court found that there was no evidence that the emergency was

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[705] 388 S.E.2d 659, 664 (Va. Ct. App. 1990).
[706] *Id.* at 661.
[707] *Id.*
[708] *Id.*
[709] *Id.*
[710] *Id.*
[711] *Id.*
[712] *Id.*
[713] *Id.* at 661-62.
[714] *Id.* at 662.
[715] *Id.*
[716] *Id.*
[717] *Id.* at 663-64.
[718] *Id.* at 664.

used merely as a pretext to achieve only law enforcement goals.[719]

In *People v. Guins,* the defendant's convictions for cocaine possession and drug paraphernalia possession were reversed when the court found that police were acting with a law enforcement motive rather than a community caretaking motive at the point where they first entered the defendant's apartment.[720] In this case, firefighters were called to the defendant's apartment to put out a fire.[721] While examining the apartment for damage, a fire investigator found empty glassine envelopes and an undamaged locked security box.[722] The investigator suspected that the box might contain contraband, so he informed the police.[723] Within the hour, a police officer arrived at the apartment to investigate the box.[724] The responding officer was unable to open the box.[725] He then ordered an evidence technician to photograph the box and take it to the police station.[726] No other items were removed from the apartment.[727] At the police station, the box was opened, and cocaine was discovered inside.[728] At the time of the seizure, the fire had been extinguished and police guards secured the building.[729]

The court found that the protection of property of victims of a residential fire was a legitimate exercise of governmental authority.[730] However, in this case, the officer acknowledged that he entered the apartment and seized the box, not to protect the owner's property, but because there might have been evidence of a crime inside.[731] Since the officer's motive was to seize evidence of a crime, the emergency doctrine did not ap-

[719] *Id.*
[720] 569 N.Y.S.2d 541, 543-44 (N.Y. App. Div. 1991).
[721] *Id.* at 541.
[722] *Id.*
[723] *Id.* at 541-42.
[724] *Id.*
[725] *Id.* at 542.
[726] *Id.* at 541-42.
[727] *Id.*
[728] *Id.*
[729] *Id.*
[730] *Id.* at 543.
[731] *Id.*

ply.[732] The court held that the warrantless seizure of the security box was not justified and, thus, the appellate court suppressed the drug evidence and dismissed the indictment against the defendant.[733]

C. PRONG THREE: POLICE ACTION MUST FALL WITHIN THE SCOPE OF THE EMERGENCY

This section discusses the scope of the emergency doctrine with respect to areas that may be searched,[734] including initial entries into private premises by responding officers, subsequent entries, and actions that police may take once inside. First, police may only enter an area at a time when they reasonably believe their assistance is needed,[735] and that area must have a proximate connection with the perceived emergency.[736] In addition, once police enter premises to address an emergency, their authority is limited to alleviating the emergency at hand.[737] This includes not only conducting a search of the premises to search for persons in need of aid, but also a protective sweep to ensure that no further danger is present.[738] During this time, police may also seize any evidence of criminality in plain view.[739] In no case does the emergency doctrine give the police authority to conduct an exhaustive search of the premises for evidence of a crime.[740] Thus, once the police alleviate the emergency and the premises are secure, further searches are impermissible.[741] Any subsequent entries made after the emergency has ended must

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[732] *Id.*

[733] *Id.* at 543-44.

[734] Throughout this section, "areas" or "premises" includes residences, commercial buildings, motor vehicles, and persons.

[735] People v. Mitchell 347 N.E.2d 607, 609 (N.Y. 1976).

[736] *Id.*

[737] Mincey v. Arizona, 437 U.S. 385, 393 (1978). *But cf.* Michigan v. Tyler, 436 U.S. 499, 510 (1978) (stating that officials may remain a reasonable time after the emergency has been alleviated to investigate the cause of a blaze).

[738] *Mincey*, 437 U.S. at 392; *Tyler*, 436 U.S. at 509-10.

[739] *Mincey*, 437 U.S. at 393; *Tyler*, 436 U.S. at 509.

[740] State v. Illig, 467 N.W.2d 375, 381 (Neb. 1991).

[741] *See, e.g.*, United States v. Goldenstein, 456 F.2d 1006, 1010 (8th Cir. 1972) (although police entry of hotel room in search of possibly wounded man was proper, subsequent search of suitcase in room after officer determined that no one was present in room illegal).

be accompanied by a valid warrant,[742] assuming no other exceptions to the warrant requirement apply at that time.[743] While these rules outline the scope of the emergency exception, the section below illustrates just how far they have been stretched in particular situations.

1. Area Searched Must Have a Connection to the Emergency

If an officer reasonably believes that a person or property is in need of immediate protection, that officer may enter only the area where she reasonably believes the emergency is taking place[744] or which is somehow connected to the emergency.[745] Often this will not pose any significant dilemma because the facts that give rise to the emergency, whether reported or observed, will also guide the officer directly to the site of the emergency. Difficulties arise, however, in cases involving emergencies such as missing or unconscious persons. For instance, in *State v. Follett,* a police officer observed the defendant driving in an erratic manner in a grocery store parking lot.[746] The officer stopped the defendant, and arrested him for driving under the influence.[747] The defendant was then taken to the police station.[748] He did not have any identification and was acting very strangely.[749] The arresting officer concluded from his erratic behavior that the defendant was suffering from a cocaine overdose.[750] The arresting officer then went back to the grocery store parking lot where defendant's car was situated and searched the defendant's car to determine what the defendant had ingested.[751] The search of the car, which the court expressly stated was not motivated by an intent to arrest or seize evidence,

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[742] *See, e.g., Tyler,* 436 U.S. at 501-03, 511 (warrantless re-entry two weeks after fire extinguished unconstitutional).

[743] *See supra* notes 12-22 and accompanying text for a listing of warrant exceptions.

[744] People v. Mitchell, 347 N.E.2d. 607, 609 (N.Y. 1976).

[745] This, of course, presupposes that the police are acting without a warrant and that no other exceptions to the warrant requirement apply at the time.

[746] 840 P.2d 1298, 1299 (Or. Ct. App. 1992) (en banc).

[747] *Id.*

[748] *Id.*

[749] *Id.*

[750] *Id.*

[751] *Id.*

was upheld because the officer had a reasonable belief that the area (the defendant's car) had a connection to the emergency (the defendant's possible cocaine overdose), and was the place where the cocaine would most likely be found.[752]

In contrast, in *United States v. Goldenstein*, the police responded to a report of a fight at a hotel.[753] An officer observed a man, lying on the floor of the hotel, with a grave gunshot wound.[754] The desk clerk told the officer that a second wounded man, the defendant, had gone upstairs to his room after the fight carrying a gun.[755] The officer knocked on the door of the defendant's room, but received no answer, so the officer had the clerk open the door.[756] The officer searched the room, but the defendant was not there.[757] Next, the police searched a closed suitcase in the room and observed currency in the suitcase that tied the defendant to the crime of aggravated bank robbery.[758] The court found the officer's entry into the room to be reasonable, but determined the search of the suitcase to be unreasonable and, as a result, ruled that the currency found in the suitcase was inadmissible since the suitcase had no connection to the emergency.[759]

2. *Necessity of Initial Entry*

Since the purpose of the emergency exception is to allow police to provide immediate aid in situations where the safety of persons or property is threatened, a delayed response not only calls the officer's motivation into question,[760] but it also falls outside the scope of the exception if the emergency has been alleviated. For instance, in *Root v. Gauper*, the court held that the emergency doctrine did not validate the officers' warrantless en-

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[752] *Id.* at 1302-03.

[753] 456 F.2d 1006, 1010 (8th Cir. 1972).

[754] *Id.*

[755] *Id.*

[756] *Id.*

[757] *Id.*

[758] *Id.* at 1008-10.

[759] *Id.* at 1010-11.

[760] *See supra* Part III.B for a discussion of the immediacy and motivation requirements.

try into a residence when the officers knew the shooting victim was already being transported to the hospital in an ambulance.[761] In that case, police had received a telephone call reporting a shooting in a residence.[762] While on their way to the scene of the shooting, they passed the ambulance that was carrying the shooting victim.[763] The ambulance driver radioed to the police officers that he had removed the injured party from the residence and was on the way to the hospital.[764] There were no facts to indicate that any others were injured in the residence.[765] The ambulance driver never mentioned any other victims and the police officers did not see anyone wounded outside the residence.[766] Additionally, the officers waited for back-up before going into the residence,[767] and the fact that they had a camera for taking pictures of the scene of the shooting indicated that the officers were looking for evidence of a crime and were not solely motivated by a desire to alleviate the emergency situation.[768] Thus, although there clearly was an emergency situation initially because of the shooting, the officers could not make a warrantless entry after the emergency was alleviated. Obviously, these circumstances fell outside the scope of the emergency doctrine and, in addition, failed to meet the first prong of the test proposed in this article: that officers must reasonably believe someone is in need of aid.

3. Subsequent Entries

Perhaps the most difficult aspect of the scope of the emergency doctrine is determining the extent to which subsequent entries are lawful. This article defines subsequent entries as any entry made after that of the initial responding officer or officers. They range from the clearly lawful "continuation" of the initial entry which occurs when other officials, officers, or spe-

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[761] 438 F.2d 361, 364-65 (8th Cir. 1971).
[762] *Id.* at 363.
[763] *Id.*
[764] *Id.*
[765] *Id.* at 365.
[766] *Id.*
[767] *Id.*
[768] *Id.*

cialists arrive at the scene shortly after the initial responding officers have entered,[769] to the clearly unlawful warrantless entry made several days after the emergency has been alleviated.[770] Since many cases involve several warrantless entries made by various officers, courts are forced to decide when subsequent entries cease to fall under the so-called "continuation doctrine" and, as such, become unlawful. Not surprisingly, there is no magic timeline or number of entries at which the line can be drawn; rather, the line shifts depending on the particular facts of each case.

The United States Supreme Court addressed the scope of the general emergency exception in *Mincey v. Arizona*.[771] In this case, an undercover narcotics agent, Officer Headricks, arranged a drug deal with the defendant and arrived at his apartment with the money.[772] When the door opened, Officer Headricks entered the apartment and quickly proceeded to the bedroom.[773] Several other officers, who had accompanied Headricks, rushed into the defendant's apartment and heard a volley of gunshots coming from the bedroom.[774] Officer Headricks was fatally wounded, and an acquantence of Mincey's in the apartment was also injured as a result of the gunfire.[775] The officers at the scene who had not sustained injuries immediately summoned medical assistance and then searched the apartment to locate all of the injured persons.[776] Homicide detectives arrived at the scene within a few minutes and took over the investigation.[777] Once all of the shooting victims were removed, the homicide detectives began to gather evidence.[778] Over the course of the next four days, the detectives performed an "ex-

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[769] *See, e.g.*, State v. Mincey, 636 P.2d 637 (Ariz. 1981).

[770] *See, e.g.*, Michigan v. Tyler, 436 U.S. 499 (1978) (warrantless re-entry for investigation of arson four days after fire is held unconstitutional).

[771] 437 U.S. 385 (1978).

[772] *Id.* at 387.

[773] *Id.*

[774] *Id.*

[775] *Id.* at 387-88.

[776] *Id.* at 388.

[777] *Id.* at 388-89.

[778] *Id.* at 389.

haustive and intrusive [warrantless] search" of the crime scene.[779] The defendant moved to exclude all of the evidence gathered during the search, arguing that the detectives' warrantless entry violated the Fourth Amendment.[780]

In analyzing this case, the Court recognized that the Fourth Amendment does not bar warrantless entries when police reasonably believe a person is in need of aid,[781] but added that any "warrantless search must be 'strictly circumscribed by the exigencies which justify its initiation' and it simply cannot be contended that this search was justified by any emergency threatening life or limb."[782] While the Court clearly held that the scope of the emergency exception was limited to alleviating the emergency at hand, and that the detectives' four day search continued too long, it did not state that the detectives' entry in and of itself was unlawful, nor did it decide exactly where the detectives crossed the line. Instead, the Court remanded the case to the Arizona Supreme Court for a determination as to which evidence, if any, was gathered unlawfully.[783]

On remand, the Arizona Supreme Court[784] held that the officers who attempted to assist Headricks entered the apartment lawfully under the emergency doctrine.[785] It continued that the detectives' entry constituted a continuation of the initial entry and was, therefore, within the scope of the emergency exception.[786] The court reasoned that the detectives arrived shortly after the shooting, even before the injured persons within the apartment were taken to the hospital, and that the officers involved in the incident were precluded from investigating the

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[779] *Id.* The detectives searched drawers, cupboards, closets, and clothes, removed sections of the carpets, dug bullet fragments out of the walls, and photographed and diagrammed the entire apartment. *Id.*

[780] *Id.*

[781] *Id.* at 392.

[782] *Id.* at 393 (quoting Terry v. Ohio 392 U.S. 1, 25-26 (1968) (citation omitted)).

[783] *Id.* at 395 n.9.

[784] State v. Mincey, 636 P.2d. 637 (Ariz. 1981).

[785] *Id.* at 649. The court held that Headrick's entry was unlawful because he failed to knock and announce. *Id.* It continued that the other officers' lawful entry under the emergency exception sufficiently purged Officer Headrick's illegal entry, thus none of the evidence subsequently seized was tainted as a result of the illegality. *Id.*

[786] *Id.*

scene pursuant to a police department policy.[787] Thus, all evidence in plain view was subject to seizure by the detectives.[788] The court also went on to hold that the evidence seized during the subsequent entries by the detectives over the next four days were admissible *not* because these entries were considered a valid continuation of the initial entry, but rather because they fell within the good faith exception to the exclusionary rule.[789] The court stated that the detectives had not procured a warrant because they reasonably believed they were operating under Arizona's "murder scene exception."[790]

Since *Mincey*, many courts have agreed that when police lawfully enter premises under the emergency exception, subsequent entries by other officers, usually to provide backup support or special expertise, occurring while the initial responding officers are still on the scene is a continuation of the initial entry and, as such, the officers' subsequent entries are considered to be within the scope of the emergency exception.[791] Further, any officials who enter premises under the "continuation doctrine" are subject to the same limitations in regards to addressing the emergency as are the initial responding officers.[792] Courts have also made it clear that while officers are limited to seizing evidence in plain view, they may continue to seize or

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[787] *Id.*

[788] *Id.*

[789] *Id.* at 650 n.2.

[790] *Id.* at 650. The lead detective asked a county attorney whether he needed to procure a warrant to search the premises, and the attorney replied that he did not so long as he did not leave the premises. *Id.*

[791] Michigan v. Tyler, 436 U.S. 499, 511 (1978) (holding under the circumstances of the case, the limited visibility due to smoke, the early morning hours, and the re-entry occurring a short time after the first entry, that the second entry was just a continuation of the first, and was thereby valid); United States v. Boetteger, 71 F.3d 1410, 1416 (8th Cir. 1995) (re-entry by authorities with special expertise in addressing explosives two days after initial entry by local firefighters upheld due to continuing danger to public safety presented by explosive chemicals and destructive explosives found in defendant's apartment); State v. Magnano, 528 A.2d 760, 764 (Conn. 1987) (finding that when law enforcement officers enter private premises to respond to a call for help, and during the response see but do not seize evidence observed in plain view, the officers may re-enter to seize the evidence).

[792] *See Boetteger*, 71 F.3d at 1414-15 (each official who entered or re-entered defendant's apartment "did so to ascertain the cause of the explosion and detect other devices which could explode.").

process such evidence even after the emergency has been alleviated.[793] Some courts have allowed officers to re-enter premises without a warrant to retrieve observed evidence that was not seized during the initial entry.[794]

Since officers are required to leave the premises after the emergency has been alleviated except when seizing evidence already observed under the plain view doctrine, the question becomes at what point do entries lawfully made pursuant to the emergency exception become unreasonable? The Supreme Court addressed this issue in *Michigan v. Tyler.* In *Tyler,* the Court held that firefighters and police officers could enter a burning building due to emergency in order to extinguish a fire.[795] In addition, the Court held that officials could re-enter the premises without a warrant within a reasonable time after the fire had been extinguished since they had been forced to evacuate the premises during their initial entry and terminate their investigation of the fire due to the dense smoke and the darkness of the early morning hour.[796] The Court noted, however, that while officials can normally remain on the premises or re-enter the premises for a reasonable time after the fire has been extinguished to determine the fire's cause, all subsequent re-entries need to be accompanied by a warrant.[797] The Court explained that what constitutes "a reasonable time after the emergency" depends on the particular facts of each case, as well as the "individual's reasonable expectations of privacy."[798]

In *Tyler,* firefighters had extinguished a fire in commercial premises but were unable to complete their investigation into its cause due to dense smoke and darkness of the early morning hour. The officials re-entered the premises four hours later to

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[793] People v. Harper, 902 P.2d 842, 845 (Colo. 1995) (holding that "any object that comes into view during such a search may . . . be preserved without a warrant pursuant to the plain-view doctrine.").

[794] People v. Reynolds, 672 P.2d 529, 531 (Colo. 1983) (holding that "a search warrant is not required where evidence discovered in plain view is seized as part of a continuing police investigation."); *Magnano,* 528 A.2d at 764 (citing *Tyler,* 436 U.S. at 499).

[795] 436 U.S. at 509.

[796] *Id.* at 510-11.

[797] *Id.* at 511.

[798] *Id.* at 510 n.6.

determine the exact cause of the fire, although arson was suspected.[799] In addition, the police had re-entered the premises several more times over a three week period without either a search warrant or consent. Subsequently, the Supreme Court found that the re-entry four hours after the officials had extinguished the fire was valid under the particular circumstances of this case.[800] The Court, however, ruled that each of the later re-entries violated the Fourth Amendment because they were too detached from the initial emergency to fall within the emergency exception.[801] The Court explained that since a reasonable time had passed, police were required to secure either an administrative search warrant, if re-entry was necessary to determine the cause of the fire, or a criminal search warrant, if re-entry was necessary to gather evidence of arson or other crimes.[802]

In the later case of *Michigan v. Clifford*, the Supreme Court reiterated both the "reasonable time afterward" proposition, as well as the need for an administrative or criminal search warrant for subsequent entries.[803] In that case, firefighters were called to fight a fire at the defendant's residence.[804] The firefighters left the premises once the fire was extinguished around 7:00 A.M.[805] They later notified the police that they suspected arson was to blame.[806] When the police arrived at about 1:00 P.M., insurance investigators were already boarding up the house at the request of the defendant.[807] The police entered the premises and, upon gaining entry into the basement, they smelled the odor of fuel. This led them to a crock-pot beneath the basement stairs that

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[799] *Id.* at 502, 511.

[800] *Id.* at 511.

[801] *Id.* Police and firefighters had extinguished the fire by 4:00 A.M., and made sure that it would not rekindle. They then departed before finishing their customary investigation, only because the darkness and smoke made such an investigation too difficult. Thus, it was reasonable for them to return in the early morning to complete their duties.

[802] *Id.* at 508.

[803] Michigan v. Clifford, 464 U.S. 287 (1984).

[804] *Id.* at 289.

[805] *Id.* at 290.

[806] *Id.*

[807] *Id.*

was wired to an electronic timer. The officers determined that the fire originated in the basement, and then continued to search the upstairs portion of the house, including opening drawers and closets.[808] This extensive search led to additional evidence of arson. The defendants claimed that all evidence should have been suppressed because it was obtained in violation of the Fourth Amendment.[809] The government argued that, in light of *Tyler*, the search occurred within a reasonable time after the initial entry to extinguish the fire, and should be upheld.[810]

The Supreme Court agreed with the defendants, stating where "reasonable expectations of privacy remain in the fire damaged property, additional investigations begun after the fire has been extinguished . . . must be made pursuant to a warrant or the identification of some new exigency."[811] The Court found this case distinguishable from *Tyler* on two grounds in holding that the second entry was not just a continuation of the first.[812] First, since the property at issue in the present case was a residence, the owners were entitled to a greater degree of privacy than the owners of the commercial premises in *Tyler*.[813] Second, the defendants had taken measures to protect their privacy interests by instructing their insurance company to secure the house and board up the windows, which was done prior to the police entry.[814]

The government had also argued that the search was valid because all searches to determine the cause of a fire should be exempt from the administrative warrant requirement.[815] The Court rejected that argument, again recognizing the owner's reasonable expectation of privacy even in fire-damaged premises.[816] Thus, the officer should have obtained a warrant prior to

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[808] *Id.*
[809] *Id.*
[810] *Id.*
[811] *Id.* at 293.
[812] *Id.* at 296-97.
[813] *Id.*
[814] *Id.* at 296.
[815] *Id.* at 291.
[816] *Id.*

entry, absent consent or some other applicable exception.[817] The question then became, which type of warrant was required. The Court held that officials who are seeking entry to determine the cause of the fire must get an administrative search warrant. However, officials entering to search for evidence of arson are required to procure a criminal search warrant.[818]

Since the above cases clearly fall within the emergency doctrine, the difficulty arises in applying the third prong: What is the permissible scope of the entries made to combat the fire? Of course, this depends on the extent of the emergency. In the above cases, the Supreme Court stated that officials may stay for a reasonable time after the fire is extinguished, in order to fulfill their duty to investigate the cause of the blaze.[819] What constitutes a reasonable time is determined by balancing the owner's expectation of privacy with the government's interest in investigating the cause of the blaze and ensuring that the premises no longer constitute a threat to public safety. In determining the owners' privacy interest, courts must take into account the nature of the premises, commercial or residential, as well as the extent of the damage, and any action the owner takes or fails to take to safeguard his or her expectation of privacy after the fire is extinguished. On the other hand, the court must consider the government's duty to ensure that the fire is indeed extinguished and to determine the cause of the fire so that it does not recur. The above mentioned cases seem to represent extreme scenarios in that the first, *Tyler*, involves commercial premises with no action taken by the owner prior to the contested entry, while the second, *Clifford*, involves residential premises where the owners ordered the house boarded up prior to the contested entry. Thus, there is leeway for lower courts to decide what constitutes "a reasonable time after the fire is extinguished." Moreover, the question of whether this "reasonable time afterwards" element applies in other contexts or is limited to fires is also an open question.

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[817] *Id.* at 293.

[818] *Id.* at 294.

[819] Michigan v. Tyler, 436 U.S. 499, 510 (1978); *Clifford*, 464 U.S. at 291.

In one lower court opinion, a warrantless entry into private premises over six hours after a fire was upheld as being within a "reasonable interval after the fire was extinguished."[820] In that case, firefighters responded to a fire in a residence.[821] The fire was extinguished at 2:00 A.M. and all firefighting machinery was removed around 5:00 A.M.[822] At approximately 8:20 A.M., two fire chiefs and two fire marshalls entered the home to investigate the cause.[823] The four officials concluded that the circumstances of the case indicated that the fire was the result of arson.[824] The defendants had recently increased the fire insurance in their home from $95,000 to $286,000, and the walls were free of pictures though picture hooks remained on the walls.[825] Two days later, the four officials searched the home again without consent of the parties, though they informed the defendants that an administrative warrant was on the way.[826] During this search, one of the fire chiefs found evidence of an accelerant that had been placed in certain locations in the basement in a manner that might lead investigators to mistakenly conclude that a water heater had started the blaze.[827] The officials also noticed that some of the support beams in the basement were missing and, consequently, concluded that the facts established that the fire was the result of arson.[828]

The court upheld the initial search on the grounds that one of the fire chiefs had arrived at the scene while the fire was still being extinguished and had remained outside the residence until he entered at approximately 8:20 A.M.[829] In addition, the initial entry that occurred over six hours after the fire was extinguished was made in connection with efforts to secure the

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[820] Commonwealth v. Jung, 651 N.E.2d 1211, 1216 (Mass. 1995).
[821] *Id.* at 1214.
[822] *Id.*
[823] *Id.*
[824] *Id.* at 1215.
[825] *Id.*
[826] *Id.*
[827] *Id.*
[828] *Id.*
[829] *Id.* at 1217.

premises, and to investigate the cause of the blaze.[830] However, the court invalidated the second entry that occurred two days later on the grounds that the administrative warrant relied on for that search lacked particularity and, consequently, denial of the defendant's motion to suppress was vacated and remanded.[831]

4. Community Caretaking: Appropriate Scope of the Emergency Doctrine

Limiting the scope of the emergency doctrine by focusing on, for example, proximity in time and place, strikes an appropriate balance between allowing police to thoroughly perform their community caretaking functions and safeguarding individuals' Fourth Amendment rights against unreasonable searches and seizures. In applying this prong, courts recognize the unfortunate reality that in many instances, injury to persons and property is the result of criminal activity.

Because this often becomes apparent to police during their initial entry into private areas to address an emergency, this prong allows police to seize any evidence in plain view and, if necessary, to use any information gathered to later procure a warrant, thereby contributing to the efficient and effective pursuit of solving criminality. On the other hand, courts must draw a line between police actions carried out, at least in part, pursuant to community caretaking responsibilities, and police actions accomplished exclusively in pursuit of law enforcement duties. If the various facts and circumstances in no way suggest the existence or continuance of an emergency situation, the broad legal authority that government officials enjoy under the umbrella of community caretaking cannot be invoked. Hence, courts must recognize the very fact-based requirement that once an emergency has been alleviated, police must now satisfy the various constitutional standards faced by government officialdom in their pursuit of a *purely* criminal investigation.

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[830] *Id.*

[831] *Id.*

D. CASE ILLUSTRATION OF THE THREE PRONG EMERGENCY MODEL: *PEOPLE v. MITCHELL*

The cases that appeared above in the various sections or subsections rarely, if ever, relied on the three-prong test proposed in this article for identifying whether governmental actions carried out in the name of an emergency actually were consistent with Fourth Amendment principles. However, it should be noted that in 1976 the New York Court of Appeals utilized this three factor analysis in the case of *People v. Mitchell.*[832] Although the case was decided over twenty years ago, the more sophisticated analysis it offers is still not followed in most jurisdictions.[833] This case is offered as an excellent example of both proper police conduct and correct application of all three prongs of the emergency doctrine outlined above.

In *Mitchell,* a hotel maid had disappeared shortly after reporting to work.[834] A guest of the hotel reported the woman missing when she had failed to deliver linens to her room.[835] The maid's street clothes were found on the sixth floor of the hotel. After several employees attempted to locate the woman with no success, the police were notified.[836] Two officers arrived on the scene and began to search for the woman.[837] They began by checking the vacant rooms, and then knocked on the doors of the other rooms to ask the occupants about the woman.[838] During this investigation the officers knocked on the defendant's door. The defendant permitted the officers to step inside his room at that time, but he stated that he had not seen the woman.[839] The officers took a quick look around, and then left his room.

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[832] 347 N.E.2d 607 (N.Y. 1976).

[833] *But see* Gallmayer v. State, 640 P.2d 837, 842 (Alaska Ct. App. 1982) (explicitly adopting three-prong test from *Mitchell*); State v. Fisher, 686 P.2d 750, 760-61 (Ariz. 1984) (same); State v. Illig, 467 N.W.2d 375, 380 (Neb. 1991) (same); State v. Follett, 840 P.2d 1298, 1302 (Or. Ct. App. 1992) (same).

[834] 347 N.E.2d at 608.

[835] *Id.*

[836] *Id.*

[837] *Id.*

[838] *Id.*

[839] *Id.*

Later that same day, when the woman could not be located, a detective arrived and began a through search of the hotel.[840] The detective searched the basement, roof, ducts, and alleyway of the hotel. Finally, a room by room search was conducted.[841] Eventually, the detective entered the defendant's room, using the hotel's passkey and began a more thorough search.[842] The detective noticed reddish brown stains on the carpet and wall of the defendant's room.[843] A closet door was open, and the woman's body was found with her feet sticking out of a laundry basket.[844]

Following the state's successful prosecution of the defendant for murder, he appealed the conviction based on the detective's warrantless entry into his hotel room.[845] The court properly used the emergency doctrine to deny the defendant's motion to suppress.[846] First, the officers' belief that an emergency situation existed was objectively reasonable.[847] The court noted that the maid was missing for hours and that circumstances indicated that she could be somewhere in the hotel in need of assistance.[848] Second, the officers were acting under the proper subjective motivation. The court noted that the entry into the defendant's room was in response to the "emergency situation and was not motivated by the intent to apprehend and arrest him or to seize evidence."[849] The officers were unsure what had happened to the maid when they began their search.[850] The officers were not acting with law enforcement motivations because they did not know any crime had been committed.[851] The court noted that the officers' "primary concern was the

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[840] *Id.*
[841] *Id.*
[842] *Id.*
[843] *Id.* at 608-9.
[844] *Id.* at 609.
[845] *Id.*
[846] *Id.*
[847] *Id.* at 609-10.
[848] *Id.* at 610.
[849] *Id.* at 609.
[850] *Id.* at 610.
[851] *Id.*

health and safety of the maid."[852] Furthermore, the court observed that even if the officers had considered the possibility of foul play, it was not their primary motivation in searching the defendant's room.[853] Lastly, the court held that the officers' emergency search was proper in its scope.[854] The officers had properly searched all of the public areas of the hotel before beginning to search the private rooms. In addition, the defendant's room was on the sixth floor, the same floor where the maid was last seen and her clothing was found.[855]

IV. CONCLUSION

Fourth Amendment jurisprudence is complicated. This article was written with the hope that it could shed some light on one piece of the puzzle, namely, where police act in response to an emergency, under their community caretaking functions. In contrast to police actions carried out in pursuit of their law enforcement functions, where a search and seizure is evaluated by probable cause, whether the police had a warrant, or whether an exception to the Fourth Amendment was applicable, the community caretaking doctrine is only concerned with an emergency where police act to protect human life or substantial property interests from an immediate threat. By its very nature, an emergency implies that there is no time to get a judicial warrant and police must act quickly, for example, to save a kidnapping victim or stop a fire from destroying a business.

This article proposes a three-prong test which may aid courts in their determination of whether an emergency existed, so that it can be determined whether police were acting within their legitimate community caretaking functions. First, a police officer must reasonably believe his or her assistance is needed immediately to protect human life or substantial property interests. Second, the officer's acts must be based, at least in part, on a subjective motivation to aid or protect life or property. Third, the police action in question must fall within the scope of the

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[852] *Id.*
[853] *Id.*
[854] *Id.*
[855] *Id.*

emergency, both in terms of the area to be searched and subsequent entries.

This three-prong test is not new. In fact, it has been in existence for more than twenty years, but it has not been utilized in a majority of jurisdictions. I believe this test is a helpful tool in evaluating the emergency doctrine and hope that more courts will begin using this test to illuminate one area of Fourth Amendment jurisprudence.