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# **ONE MINUTE BRIEF**

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**NUMBER:** 2019-17    **DATE:** 08-12-19    **BY:** Devallis Rutledge    **TOPIC:** No "Community Caretaking" Entry

**MODIFIES 1MBs 2018-02 AND 2018-16**

**ISSUE:** Is there a "community caretaking" exception to the warrant requirement for police entry into a private home?

There are **four** lawful ways for police to enter private homes (search or arrest **warrant**, valid **consent**, residential search term of **probation/parole/PRCS/supervised release**, or one of the recognized categories of **exigency**. (See 1MB 2018-16.)

As indicated in 1MB 2018-02, "*there is **considerable confusion** as to when the 'community caretaking' doctrine applies, and as to its proper application*" (citing as one example the three varying opinions in *People v. Ray* (1999) 21 Cal.4<sup>th</sup> 464).

The California Supreme Court has now declared that while "community caretaking" may justify certain **vehicle** searches, it is **not an exigency** that justifies warrantless **home entry**:

*"We conclude that an entry for reasons short of a perceived emergency, or similar exigency, fails to satisfy the relevant constitutional standard. We disapprove the lead opinion in People v. Ray, to the extent it conflicts with the views expressed here."* *People v. Ovieda* (2019) \_\_\_ Cal.5<sup>th</sup> \_\_\_, No. S247235, Slip opn. at p. 1.

- Police were called to the home of Willie Ovieda, where he was reportedly suicidal, with access to firearms. After their arrival, Ovieda and two friends came outside. Officers searched and cuffed Ovieda. The friends told officers they had collected the firearms and put them in the garage, and no one else was present inside. Officers entered "to do a protective sweep" and to be sure there was no one else inside who might be armed, injured or in need

of aid. Drugs and illegal weapons seen in plain view were seized, and Ovieda moved to suppress all evidence resulting from the warrantless entry.

Both the trial court and the Court of Appeal denied suppression, finding that entry was justified by the “community caretaking” exception. The California Supreme Court has reversed, ruling that **as to residential entries**, “*No such exception exists, and the Ray lead opinion was wrong to create one.*” *Id.*, Slip opn. at p. 10.

- If entry into Ovieda’s home could not be justified by “community caretaking,” how about the “**emergency aid**” exigency? The unanimous opinion in *Ovieda* does acknowledge that “*police do not need ironclad proof of a likely serious, life-threatening injury to invoke the emergency aid exception*” to justify immediate entry, but “*officers must possess an objectively-reasonable basis for believing that an occupant was seriously injured or threatened with such injury*” before making entry. *Id.*, Slip opn. at p.18.

Because the officers in this case had no reason to disbelieve defendant’s friends’ assurances that no one else was inside and that the firearms had been removed to the garage (and because Ovieda could have been lodged 5150 and a warrant sought for his guns), the court found that any emergency-aid rationale could be based only on speculation—not on any objective facts. “[*T*]he objective facts that elevate speculation to reasonable suspicion were not present or were not articulated at the suppression hearing.” *Ibid.*

**BOTTOM LINE:** “*In sum, the community caretaking exception asserted in the absence of exigency is not one of the carefully delineated exceptions to the residential warrant requirement recognized by the United States Supreme Court.*” *Id.*, Slip opn. at p. 24.

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.