No. 24-

In the Supreme Court of the United States

WILLIAM TREVOR CASE, PETITIONER

v.

STATE OF MONTANA, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MONTANA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether law enforcement may enter a home without a search warrant based on less than probable cause that an emergency is occurring, or whether the emergency-aid exception requires probable cause.

PARTIES TO THE PROCEEDINGS

Petitioner William Trevor Case (defendant-appellant below) and Respondent the State of Montana (plaintiff-appellee below) were the sole parties before the Montana Supreme Court and the state trial court in these criminal proceedings.

In a separate but related proceeding, Case petitioned the Montana Supreme Court for an extraordinary writ of supervisory control. Case and Respondent the Montana Third Judicial District Court were the sole parties to the writ proceeding.

RELATED PROCEEDINGS

Supreme Court of the State of Montana

State of Montana v. *William Trevor Case*, Case No. 23-0136 (Aug. 6, 2024)

District Court of the Third Judicial District, In and For the County of Anaconda-Deer Lodge

State of Montana v. *William Trevor Case*, Case No. 21-100 (Feb. 24, 2023)

Supreme Court of the State of Montana

William Trevor Case v. *Montana Third Judicial District Court*,
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INTRODUCTION

This case gives the Court the opportunity to clarify "the contours of the exigent circumstances doctrine as applied to emergency-aid situations," an issue that has consistently confused and divided the lower courts. *Caniglia* v. *Strom*, 593 U.S. 194, 206 (2021) (Kavanaugh, J., concurring). In *Brigham City* v. *Stuart*, 547 U.S. 398 (2006), this Court held that before police officers enter a home without a warrant, they must have "an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury." *Id.* at 400. The state courts and federal courts of appeals are deeply divided, however, on whether this "objectively reasonable basis" standard requires police making a warrantless entry to have probable cause to believe an emergency exists or some lower level of suspicion.

In a 4-3 decision, the Montana Supreme Court joined three other state high courts, as well as the First, Eighth, and Tenth Circuits, in rejecting the probable cause requirement. Deeming probable cause "unwieldy" and "superfluous," the majority held that police need only have some "objective, specific, and articulable facts from which an experienced officer would *suspect* that a citizen is in need of help or is in peril." Pet.App.12a-15a (emphasis added) (citation omitted). This holding echoes the other courts treating *Brigham City*'s "reasonable basis" standard as "a less exacting standard," *State* v. *Curet*, 289 A.3d 176, 190 (Conn. 2023), that "need *not* approximate probable cause," *Hill* v. *Walsh*, 884 F.3d 16, 23 (1st Cir. 2018). For these courts, it is enough that officers have a "reasonable belief," short of probable cause, that "a person inside the home was in immediate need of aid

or protection," *United States* v. *Gambion-Zavala*, 539 F.3d 1221, 1225 (10th Cir. 2008), with some going so far as to adopt the *Terry* standard for limited detentions, *e.g.*, *Curet*, 289 A.3d at 190.

The Montana Supreme Court arrived at this holding over a dissent that "assess[ed] the presence of exigent circumstances" by examining "whether there was probable cause to believe [someone] was subject to imminent harm, distress, or in need of assistance." Pet.App.24a (McKinnon, J., dissenting). The "probable cause requirement," the dissent reasoned, "is not limited to only the commission of a criminal offense but applies to whether there is probable cause to believe a person is in imminent peril." *Ibid.* This reasoning tracks the position taken by the D.C., Second, and Eleventh Circuits, as well as the Nebraska and Colorado high courts. Those courts have held that officers must have "probable cause to believe that a person is 'seriously injured or threatened with such injury" before entering a home without a warrant, *Est. of Chamberlain* v. *City of White Plains*, 960 F.3d 100, 105 (2d Cir. 2020) (citation omitted), concluding that *Brigham City*'s "reasonable basis" standard is "similar to probable cause." *State* v. *Eberly*, 716 N.W.2d 671, 679 (Neb. 2006).

The divided decision here not only illustrates the split among the courts on the emergency exception, but also shows why this case provides a good opportunity to resolve it. Officers entered William Trevor Case's home after his ex-girlfriend reported that he had threatened suicide. It is undisputed, however, that the officers all knew Case had previously "attempt[ed] to elicit a defensive response, i.e., a 'suicide-by-cop'" in dealings with police. Pet.App.5a. Because

the officers believed "it was unlikely Case required immediate aid, but rather was likely lying in wait for them to commit suicide by cop" (Pet.App.29a (McKinnon, J., dissenting)), they waited roughly 40 minutes before entering the home (Pet.App.5a). While the majority believed these facts and circumstances sufficed to reasonably suspect there was "a citizen is in need of help" (Pet.App.16a (citation omitted)), the dissent concluded that under a probable cause standard, "the State has not met its burden of demonstrating the presence of exigent circumstances" (Pet.App.29a). This is thus the paradigmatic case where the standard of suspicion is dispositive.

The Court should take this case to resolve the standard for warrantless home entries under the emergency-aid exception. In *Caniglia*, the Court made clear that while "community caretaking" concerns did not alone justify a warrantless home entry, police could take such action "to render emergency assistance" if "exigent circumstances were present." 593 U.S. at 198. But because that case provided no occasion to examine the "contours" of the emergency-aid exception, 593 U.S. at 206 (Kavanaugh, J., concurring), courts remain divided and in need of guidance. As the concurring justices in *Caniglia* noted, the "exigent circumstances" exception implicates recurring "heartland emergency-aid situations," *ibid.* (Kavanaugh, J., concurring), and "important real-world problem[s]," *id.* at 202 (Alito, J., concurring), including situations involving suicide risk and elderly incapacitation. Yet, the majority here struggled to even identify the correct doctrinal "'framework' for law enforcement to address situations like this" (Pet.App.14a), collapsing the "community caretaking" doctrine into "exigent circumstances" (Pet.App.12a

n.3). To clarify that framework, and provide the guidance *Caniglia* invited, this Court should grant certiorari.

OPINIONS BELOW

The opinion of the Supreme Court of Montana, (Pet.App.1a-35a), is reported at 553 P.3d 985.

JURISDICTION

The judgment below issued on August 6, 2024. On October 11, Petitioner applied for an extension of time to file a petition for writ of certiorari. Justice Kagan granted that application, extending the time to file this petition through December 4. Petitioner timely filed this petition. The Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend. IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT

A. The police entry into Case's residence

This petition arises from the warrantless entry into, and search of, Case's home by the Anaconda-Deer Lodge County Police Department on September

27, 2021. During the search, the police seized evidence used to prosecute Case for a felony (assault on a police officer). Case moved to exclude the evidence under the Fourth Amendment and Montana's parallel constitutional protections. After Case was convicted, he appealed to the Montana Supreme Court, which affirmed in a divided opinion. The salient facts are these:

1. On September 27, 2021, Case's ex-girlfriend, J.H., called police dispatch and asserted that Case had threatened suicide during a telephone argument that evening. Pet.App.3a; see also Pet.App.31a (dissent). J.H. purportedly became concerned when Case said that "he was going to get a note or something like that," and threatened to harm any officers that came to his home if she called the police. Pet.App.3a. J.H. claimed Case "was threatening suicide and the phone just went silent, and she didn't get a response." Pet.App.31a. According to J.H., Case "said he had a loaded gun, and all I heard was clicking and, I don't know, I thought I heard a pop at the end, I don't know." *Ibid.*

Three officers went to Case's home: Captain Dave Heffernan, Sergeant Richard Pasha, and Officer Blake Linsted. Pet.App.4a. The officers did not consider obtaining a warrant because "it wasn't a criminal thing," and they "were going in to assist him." *Ibid.* Concerned with the danger to the officers, Captain Heffernan called Police Chief Bill Sather, who arrived about 30 minutes after the other officers. *Ibid.*

Officers Pasha and Linsted looked through the windows of Case's home. *Ibid.* They did not see Case or observe any sign of distress, movement, or injury—only empty beer cans, an empty handgun holster, and

a notepad on the table. *Ibid.* The officers knocked on Case's front door and yelled through an open window, but Case did not respond. *Ibid.*

2. As established by bodycam footage, "[a]ll the officers on the scene stated that it was unlikely Case required immediate aid, but rather was likely lying in wait for them to commit suicide by cop." Pet.App.29a (McKinnon, J., dissenting); accord D.C. Doc. 55.1.

The officers were familiar with Case's history of alcohol abuse and mental-health issues. Critically, they were also aware of a prior encounter with Case that the police treated "as an attempt to elicit a *defensive* response, i.e., a 'suicide-by-cop.'" Pet.App.5a (emphasis added). While outside Case's residence, Sergeant Pasha remarked to the other officers: "I'm scared that maybe he didn't actually shoot himself, because he can't and he's tried suicide by cop before, and he like left us all this so we're gonna go in the house and *** he is going to pull a gun on us." Pet.App.29a (McKinnon, J., dissenting); accord Doc. 55.1.

3. The officers waited roughly 40 to 45 minutes from arrival before entering Case's home. Pet.App.5a. Captain Heffernan first returned to the station to retrieve a ballistic shield, and Sergeant Pasha and Officer Linsted retrieved their personal AR-15s from their patrol car. *Ibid.*; accord Doc. 55.1.

Chief Sather decided to enter Case's home after discussing the other officers' observations and concerns. Pet.App.4a-5a. Sergeant Pasha continued to worry that Case wanted to engage the officers to induce them to fire upon him. Doc. 55.1. When Sergeant Pasha remarked "that he's gonna make us come into this house and he's gonna want to shoot it out,

and so I want to be prepared," Chief Sather replied, "he ain't got the guts." *Ibid.*

The four officers entered Case's residence through the unlocked front door, announcing themselves and "yelling the whole time." Pet.App.5a. In clearing the first floor, the officers again noted the holster and notepad they had seen through the window. *Ibid.* Sergeant Pasha and Officer Linsted proceeded upstairs, while Chief Sather and Captain Heffernan proceeded downstairs. *Ibid.*

As Sergeant Pasha entered and began to sweep an upstairs bedroom, Case began opening a closet curtain. Pet.App.6a. Sergeant Pasha purportedly saw a "dark object" near Case's waist and fired one shot, striking Case in the left arm and lower left abdomen. *Ibid.* Officer Linsted entered the room and began administering first aid to Case. *Ibid.* After Captain Heffernan and Chief Sather entered the room, Captain Heffernan noticed and retrieved a handgun lying in a laundry basket near Case. *Ibid.*

The handgun was seized, and Case was taken by ambulance to the hospital. *Ibid.*

B. The prosecution, suppression motion, and trial

On October 1, 2021, the Anaconda-Deer Lodge County Police Department charged Case with felony assault on a peace officer. *Ibid.* Case thereafter filed a motion to suppress the evidence obtained from the officers' warrantless entry into, and search of, his home. Pet.App.6a-7a.

The trial court held an evidentiary hearing on Case's suppression motion on February 14, 2022. Pet.App.7a. The four officers involved in the search

and J.H. testified at the hearing. At the conclusion of the hearing, the trial court denied the motion to suppress:

> You know we can slice the bologna as thin as we want about exigency versus emergency, you know, and different statutory definitions in different context, but police department got a call.
>
> ***
>
> But that micro analysis here says, yes for the purpose of whether or not there was an exigency when they went in because they still didn't know was he in there? Was he dead? Was he waiting for them? Was he gonna do it the suicide by cop thing? You know, what was going to happen? They had to be careful. But it was an exigent circumstance. They went into the house without a warrant. Uh, does not render what came as a result of that inadmissible. The Motion to Suppress is denied.

Pet.App.41a, 43a.

The matter proceeded to a jury trial, and Case was convicted on December 8, 2022. Pet.App.3a, 7a.

C. The divided Montana Supreme Court opinion

In a 4-3 decision, the Montana Supreme Court upheld the trial court's suppression ruling, reasoning that the officers properly entered Case's home under the "community caretaker" exception, as developed in Montana cases. Pet.App.18a-20a.

Case argued that the officers lacked exigent circumstances for entering his home, and that the federal emergency-aid exception (as well as Montana's

variant) was inapplicable. Ct.App.Br. 24-30. The facts objectively reflected no ongoing emergency requiring immediate action, Case reasoned, because the officers waited more than 40 minutes to enter his home, and the known facts suggested Case sought to engage police officers rather than to commit suicide by his own hand. *Id.* at 29-30. Nor, Case argued, could the search be justified under the community caretaking doctrine, which was abrogated by this Court's decision in *Caniglia* v. *Strom*, 593 U.S. 194 (2021). Ct.App.Br. 33-34.

In a divided decision, however, the Montana Supreme Court upheld the entry under its "community caretaker" test. Pet.App.18a-20a. The majority observed that the doctrine properly applies "when a peace officer acts on a duty to promptly investigate situations 'in which a citizen may be in peril or need some type of assistance from an officer.'" Pet.App.9a (citation omitted). While noting that *Caniglia* "expounded on the propriety of the community caretaking doctrine," the majority concluded that Montana's formulation "comports with *Caniglia*." Pet.App.9a, 11a. On the majority's reading, *Caniglia* "implied that the requisite inquiry in cases where [the community caretaking doctrine] might apply is whether there were exigent circumstances rendering the entry 'reasonable,'" but stopped short of "ruling that the doctrine is itself unreasonable per se." Pet.App.11a. The majority reasoned that *Caniglia* posed no obstacle to applying its community caretaker doctrine because "[u]nlike the situation here, there was no exigency in *Caniglia* to justify the officer's entry." *Ibid.*

The majority then turned to Montana's "community caretaker" test, which drew on "the Ninth Circuit

Court of Appeals' exigent circumstances test for warrantless entry." Pet.App.13a. An "officer has the right to stop and investigate," the majority reasoned, "as long as there are objective, specific and articulable facts from which an experienced officer would suspect that a citizen is in need of help or is in peril." Pet.App.12a-13a (citation omitted). Because the doctrine is limited to situations where "a warrantless entry is wholly divorced from a criminal investigation and is otherwise reasonable," the majority deemed the "probable cause element" "superfluous," and declined to adopt a requirement that there be "probable cause to believe a person is in imminent peril." Pet.App.14a-15a.

This community caretaker test was met, the majority reasoned, because the officers had "objective, specific, and articulable facts" supporting their belief that Case was "in need of help"—specifically, that "Case was suicidal and potentially intoxicated." Pet.App.16a (citation omitted). Analogizing to the sole Montana decision applying the doctrine to a warrantless home entry, the majority suggested that the officers here also "were responding to a threat of imminent suicide, a non-criminal but imminently perilous situation in which immediate action is often necessary." Pet.App.18a-20a (quoting *Est. of Frazier* v. *Miller*, 484 P.3d 912, 920 (Mont. 2021)).

Justice McKinnon dissented, joined by two other justices. She noted that the majority "misapprehend[ed] *Caniglia*, which held that the community caretaker doctrine was *not* a standalone exception to the warrant requirement and did not permit warrantless entries into personal residences." Pet.App.24a-25a. Because Montana Supreme Court precedent

treated the community caretaker doctrine as "an exception to the warrant requirement," its "reasoning was inconsistent with what *Caniglia* subsequently held." Pet.App.27a-28a. Justice McKinnon criticized the majority for "extend[ing] the community caretaker doctrine to circumstances specifically disavowed by the Supreme Court" in *Caniglia*. *Ibid.*

Justice McKinnon reasoned that "the probable cause requirement under the exigency exception is not limited to only the commission of a criminal offense but applies to whether there is probable cause to believe a person is in imminent peril and in need of help." Pet.App.24a. Under that standard, the dissenters would have reversed, because "the record does not support the presence of exigent circumstances." Pet.App.28a. "All the officers on the scene stated that it was unlikely Case required immediate aid, but rather [was] likely lying in wait for them to commit suicide by cop." Pet.App.29a. The officers "were not responding to a call from Case himself requesting immediate assistance"; there were "no signs of an active emergency in progress"; and "[m]ore telling to the lack of exigency, the officers waited nearly an hour before making entry." *Ibid.*

REASONS FOR GRANTING THE PETITION

The Montana Supreme Court's decision deepened a longstanding split over a question left open by *Brigham City*: does the "reasonable basis" standard for the emergency-aid exception require probable cause? Montana, three other states, and three federal Circuits have all permitted police to enter a home on less than probable cause—a reasonable "belief" or "suspicion" that someone inside is in urgent need of help. In contrast, the dissenters here would have

joined the three Circuits and two states expressly requiring the police to have probable cause that an emergency exists before making a warrantless entry.

This case presents the Court with a unique opportunity to resolve the split and provide guidance on a recurring Fourth Amendment issue—one going to the core "right of a man to retreat into his own home." *Silverman* v. *United States*, 365 U.S. 505, 511 (1961). Police must routinely weigh whether to enter a home out of urgent concern for the well-being of someone inside, whether from the risk of suicide, incapacitation, or grave injury. The standard of suspicion governing these concerns is critical to striking the right balance between the "sanctity of the home," *Payton* v. *New York*, 445 U.S. 573, 601 (1980), and the exigencies of public safety. By applying a relaxed standard, the majority here upheld a warrantless entry even though the officers only had reasonable grounds to believe—and only *purported* to believe—that Case wanted to engage them in gunplay so they would kill him. "There was no probable cause to believe Case was in imminent peril," since the objective facts informed the officers that Case presented a risk of "suicide by cop" (Pet.App.29a-30a (McKinnon, J. dissenting))—not that he "could kill [him]self at any moment," cf. *Caniglia*, 593 U.S. at 207 (Kavanaugh, J., concurring).

I. There is an entrenched split on the quantum of proof necessary to justify a warrantless home entry when the alleged exigent circumstance is the need to render emergency aid.

1. This Court held in *Brigham City* v. *Stuart*, 547 U.S. 398 (2006), that the emergency-aid exception requires police to have "an objectively reasonable basis for believing that an occupant is seriously injured or

imminently threatened with such injury" before entering a home without a warrant. *Id.* at 400. A few years later, the Court applied *Brigham City* to hold that "[o]fficers do not need ironclad proof of 'a likely serious, life-threatening' injury to invoke the emergency aid exception." *Michigan* v. *Fisher*, 558 U.S. 45, 49 (2009). But beyond reaffirming that officers could make a warrantless entry where "it was reasonable to believe that [someone] had hurt himself" and "needed treatment," *ibid.*, this Court has not explained whether *Brigham City*'s "reasonable basis" standard requires officers to have probable cause, or some lesser standard of suspicion, to believe an emergency exists.

2. Since *Brigham City* and *Fisher,* an entrenched split has developed across the Circuits and state high courts on this issue:

a. Despite acknowledging that probable cause is a "sensible" benchmark for determining whether "a person is in imminent peril and in need of help," the majority here held that officers need not have probable cause for an emergency to justify a warrantless entry. Deeming that standard applicable only "to determine whether the facts 'are sufficient to warrant a reasonable person to believe that the suspect *has committed an offense*,'" the court instead chose a less rigorous standard, under which officers may enter a home so long as they act without an investigatory purpose and possess "objective, specific, and articulable facts from which an experienced officer would *suspect* that a citizen is in need of help." Pet.App.15a-16a (emphasis added).

This standard tracks the "reasonable suspicion" standard from *Terry* v. *Ohio*, which held that police

may stop and detain someone for a brief inquiry if they have "specific and articulable facts" to suspect the person is involved in criminal activity. 392 U.S. 1, 21 (1968); accord, *e.g.*, *Ybarra* v. *Illinois,* 444 U.S. 85, 93-94 (1979). Although this Court has made clear that "*Terry* and its progeny nevertheless created only limited exceptions to the general rule that seizures of the person require probable cause to arrest," *Florida* v. *Royer*, 460 U.S. 491, 499 (1983), and has never applied *Terry*'s reasonable suspicion standard to justify entry into a home, the majority here held that officers acting in "a caretaker's capacity" with "reasonable" grounds for suspicion may make a warrantless home entry "that would otherwise be forbidden for lack of criminal activity *and probable cause*." Pet.App.15a.

b. The opinion below echoes the First, Eighth, and Tenth Circuits, which likewise do not require probable cause. For example, the First Circuit has recognized that the prosecution must show "'an objectively reasonable basis' for believing that a person inside the home is in need of immediate aid," but has held that "[t]his basis need *not* 'approximate probable cause.'" *Hill*, 884 F.3d at 23 (emphasis added) (quoting *Fisher*, 558 U.S. at 47). To support that conclusion, the First Circuit reasoned that *Fisher* "makes no mention of probable cause—only an 'objectively reasonable basis.'" *Ibid.*

The Tenth Circuit has likewise rejected probable cause and endorsed a "more lenient" standard. *Gambion-Zavala*, 539 F.3d at 1225. Describing probable cause as a "stringent" standard, that court concluded that "*Brigham City* did not require the government to show the officers had probable cause to believe that a person inside the residence required immediate aid."

Ibid. (footnote omitted) (citing *United States* v. *Najar*, 451 F.3d 710, 718 (10th Cir. 2006)). In the Tenth Circuit's view, the emergency-aid exception requires only a "reasonable belief" that "a person inside the home was in immediate need of aid or protection." *Ibid.* (citing *Najar*, 451 F.3d at 718-719).

The Eighth Circuit also treats the "objectively reasonable basis" standard as permitting a warrantless search without probable cause. *United States* v. *Quarterman*, 877 F.3d 794, 800 (8th Cir. 2017) (collecting cases). The Eighth Circuit acknowledges that probable cause is required for warrantless entries based on *other* exigent circumstances, including those involving "a risk of removal or destruction of evidence" and "hot pursuit of a fleeing suspect." *Ibid.* (citations omitted). Eschewing any "blanket rule for all cases of 'exigency' or 'exigent circumstances,'" however, the Eighth Circuit has held that an officer may possess the requisite "objectively reasonable basis that some immediate act is required to preserve the safety of others or themselves" without "need[ing] probable cause." *Ibid.*

Connecticut, Kansas, and Maryland follow a similarly lenient approach, explicitly rejecting the probable cause standard in the context of emergency aid. Connecticut, for example, holds that the "objectively reasonable basis" required to support a warrantless entry is evaluated under a "reasonable belief standard" that tracks this Court's reasonable suspicion standard from cases like *Terry*, 392 U.S. at 28, and *Maryland* v. *Buie*, 494 U.S. 325, 336-337 (1990). *Curet*, 289 A.3d at 190. This standard, the Connecticut Supreme Court stressed, is a "less exacting standard than probable cause." *Ibid.* (quoting *United States* v. *Quezada,* 448 F.3d 1005, 1007 (8th Cir. 2006)). Kansas likewise

determines whether officers have an "objectively reasonable basis" to support a warrantless entry by applying the distinct "reasonable belief" test, which it too acknowledges "is more lenient than the probable cause standard." *State* v. *Hillard*, 511 P.3d 883, 894 (Kan. 2022) (quoting *United States* v. *Porter*, 594 F.3d 1251, 1258 (10th Cir. 2006)). The Maryland Court of Appeals similarly has held probable cause "is not required to come to the possible aid" of an individual within a home. *State* v. *Alexander*, 721 A.2d 275, 286 (Md. Ct. App. 1998).

c. Other federal and state courts have implicitly adopted a less demanding test for the emergency-aid exception, using an analytic framework comparable to *Terry*'s test. The Ninth Circuit, for example, upheld a warrantless entry into a home where officers "had an 'objectively reasonable basis' to *suspect* that [the defendant] was in fact suffering from a diabetic coma." *Hopkins* v. *Bonvicino*, 573 F.3d 752, 765 (9th Cir. 2009) (emphasis modified); accord *Sandoval* v. *Las Vegas Metro. Police Dep't*, 756 F.3d 1154, 1161 (9th Cir. 2014). The Fourth Circuit has similarly held that the emergency-aid exception is satisfied by mere reasonable suspicion that an emergency exists, based on its general rule that *all* searches under exigent circumstances require only reasonable suspicion. *Figg* v. *Schroeder*, 312 F.3d 625, 639 (4th Cir. 2002); see *United States* v. *Curry*, 965 F.3d 313, 326 (4th Cir. 2020) (analyzing government's "specific" and "articulable facts"); *id*. at 363 (Richardson, J., dissenting) ("[I]n our Circuit, we have explained that reasonable suspicion of an exigency is all that is required."). So

too have the high courts of California,[1] Oregon,[2] South Dakota,[3] and Tennessee,[4] as well as the intermediate appellate courts of Michigan[5] and Ohio.[6]

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[1] *People* v. *Ovieda*, 446 P.3d 262, 269, 272 (Cal. 2019) (law enforcement need only "point to specific and articulable facts" that "can support a reasonable suspicion of the need to enter to deal with an emergency").

[2] *State* v. *Fessenden*, 333 P.3d 278, 282 (Or. 2014) ("Emergency aid requires only an objectively reasonably belief, based on articulable facts that such an emergency exists." (internal quotations and citation omitted)).

[3] *State* v. *Deneui*, 775 N.W.2d 221, 234 (S.D. 2009) ("To adhere to Fourth Amendment principles while allowing officers to protect the public in emergencies *** the officer must be able to point to specific and articulable facts, which if taken together with rational inferences, reasonably warrant the intrusion.").

[4] *State* v. *Meeks*, 262 S.W.3d 710, 723 (Tenn. 2008) (officers' "objectively reasonable belief [of] *** a compelling need to act" must be rooted in "specific and articulable facts and the reasonable inferences drawn from them" (footnotes omitted)).

[5] *People* v. *Lemons*, 830 N.W.2d 794, 797 (Mich. Ct. App. 2013) ("[T]he emergency-aid exception to the warrant requirement allows police officers to enter a dwelling without a warrant under circumstances in which they reasonably believe, based on specific, articulable facts, that some person within is in need of immediate aid." (internal quotations omitted)).

[6] *State* v. *Modreski*, 241 N.E.3d 942, 945 (Ohio Ct. App. 2024) ("The emergency-aid exception allows police to enter a home without a warrant *** when they reasonably believe, based on specific and articulable facts, that a person within the home is in need of immediate aid." (internal quotations omitted)).

d. The D.C., Second, and Eleventh Circuits have all taken the opposite view, holding that the "objectively reasonable basis" standard requires probable cause.

In *Corrigan* v. *District of Columbia*, the D.C. Circuit recognized that the need to render emergency aid is "a type of exigent circumstance" requiring probable cause to support entering a home. 841 F.3d 1022, 1030 (D.C. Cir. 2016). "When relying on an exigent circumstances exception to the warrant requirement," the D.C. Circuit explained, "officers must have '*at least probable cause to believe that one or more of the *** factors justifying entry were present*.'" *Ibid.* (emphasis added) (quoting *Minnesota* v. *Olson*, 495 U.S. 91, 100 (1990)). That "requirement stems from the fact that an exception to the warrant preference rule excuses the government only from the necessity of going before a magistrate; it does not alter the underlying level of cause necessary to support entry." *United States* v. *Dawkins*, 17 F.3d 399, 403 (D.C. Cir. 1994); accord *Corrigan*, 841 F.3d at 1030.

The D.C. Circuit read *Brigham City* to cohere with these principles, equating its "objectively reasonable basis" standard with probable cause to believe "the urgent and compelling need that would justify warrantless entry actually exists." *Corrigan*, 841 F.3d at 1030 (quoting *Brigham City*, 547 U.S. at 406). This standard applies in the D.C. Circuit regardless of the specific kind of exigent circumstance at issue. See, *e.g.*, *Plummer* v. *Dist. of Columbia*, 317 F. Supp. 3d 50, 62 (D.D.C. 2018) (requiring probable cause of exigent risk to safety).

The Second Circuit also has expressly held that *Brigham City* requires law enforcement to have "probable cause to believe that a person is 'seriously injured or threatened with such injury'" before entering a home without a warrant. *Est. of Chamberlain*, 960 F.3d at 105 (quoting *Brigham*, 547 U.S. at 403). "To conclude there is probable cause for a forced entry under the emergency-aid exception 'requires finding a probability that a person is in danger.'" *Ibid.* (quoting *Kerman* v. *City of New York*, 261 F.3d 229, 236 (2d Cir. 2001)). For the Second Circuit, "[t]he mere 'possibility of danger' is insufficient," *ibid.* (quoting *Hurlman* v. *Rice*, 927 F.2d 74, 81 (2d Cir. 1991)), because in that event, "officers would 'always' be justified in making a forced entry," *Hurlman*, 927 F.2d at 81. Applying that rule, the Second Circuit has held that "an uncorroborated 911 call *** reporting that a mentally ill person was in distress is insufficient support for probable cause to believe there is a medical exigency." *Est. of Chamberlain*, 960 F.3d at 111.

The Eleventh Circuit follows a similar approach. Before this Court decided *Brigham City*, the Eleventh Circuit already required officers invoking the emergency exception to have "probable cause to believe a person located at the residence was in danger." *United States* v. *Holloway*, 290 F.3d 1331, 1338 (11th Cir. 2002). As it explained, "[i]n validating a warrantless search based on the existence of an emergency, as with any other situation falling within the exigent circumstances exception, the Government must demonstrate both exigency and probable cause." *Id.* at 1337.

The Eleventh Circuit revisited that holding following *Brigham City*, noting that this Court's decision rejected "an approach centered on the officers' subjective

motivation—without explicitly addressing whether this showing is to be made under the mantle of 'probable cause.'" *United States* v. *Timmann*, 741 F.3d 1170, 1178 n.4 (11th Cir. 2013). Reading *Brigham City* to endorse "essentially the same approach" as *Holloway*, the Eleventh Circuit determined that "*Brigham City* did not alter our test for the emergency aid exception." *Ibid.* Accordingly, it still holds that "officers must still have probable cause" to enter a home to render emergency aid. *United States* v. *Cooks*, 920 F.3d 735, 743 (11th Cir. 2019).

The highest courts of Nebraska and Colorado similarly require a level of proof equivalent to probable cause.[7] For example, the Nebraska Supreme Court has held that *Brigham City*'s objectively reasonable basis requires "valid reasons for the belief that an emergency exists," which "is similar to probable cause." *Eberly*, 716 N.W.2d at 679; see also *State* v. *Castellanos*, 918 N.W.2d 345, 322 (Neb. Ct. App. 2018) (same). And the Colorado Supreme Court has stated that "no *usual* probable cause is required under the emergency aid exception," but only in that police need not suspect "*criminal activity*"; it has made clear that the prosecution "must show that the police officers had *probable cause to believe that there was an emergency situation* *** that would justify a warrantless

[7] The New Hampshire Supreme Court has indicated in dicta that it would apply a heightened standard in the specific context of the home. *State* v. *Macelman*, 834 A.2d 322, 326-327 (N.H. 2003) (noting "'[r]easonable grounds' is a lower standard than the probable cause required for" the warrantless search of an automobile, but "[w]hen the police force entry into a private citizen's home *** more exacting scrutiny may be required").

search." *People* v. *Pate*, 71 P.3d 1005, 1011-1012 (Colo. 2003) (en banc) (emphases added).

3. In sum, federal and state courts are deeply divided on the quantum of proof necessary to justify a warrantless emergency search of the home. Although *Brigham City* and *Fisher* identify the applicable standard as an "objectively reasonable basis," federal and state courts continue to take widely diverging positions on what that standard means. In particular, the courts have split on whether "objectively reasonable basis" requires a showing of probable cause or some lesser quantum of proof, such as reasonable suspicion. As a result, the same facts lead to divergent outcomes depending on where the warrantless entry takes place, with some jurisdictions requiring a "level of suspicion" that is "'obviously less' than is necessary for probable cause." *Navarette* v. *California*, 572 U.S. 393, 397 (2014) (quoting *United States* v. *Sokolow*, 490 U.S. 1, 7 (1989)).

The point is underscored by the intra-jurisdictional divisions between some state courts and their coordinate federal Circuit. While the Second Circuit's formulation of the emergency exception requires probable cause, Connecticut's does not. Compare *Est. of Chamberlain*, 960 F.3d at 105, with *Curet*, 289 A.3d at 190. While the Eighth Circuit does *not* require probable cause, Nebraska does. Compare *Quarterman*, 877 F.3d at 800, with *Eberly*, 716 N.W.2d at 679. And in requiring "probable cause to believe that there was an emergency situation," *Pate*, 71 P.3d at 1012, the Colorado Supreme Court broke from the Tenth Circuit, which applies a standard that "is more lenient than the more stringent probable cause standard" *Gambion-Zavala*, 539 F.3d at 1225. The upshot is

that the same home entry's lawfulness within these jurisdictions may turn on whether the subsequent criminal case is brought in state or federal court.

4. While this Court clarified in *Caniglia* that the "community caretaking doctrine" does not apply to the home, that decision has not ameliorated the confusion over the standard of suspicion required for a warrantless home entry under the distinct emergency-aid exception. If anything, the opinion here confirms the confusion will only grow in *Caniglia*'s wake.

In *Caniglia*, this Court held that there is no standalone "community caretaking" exception that would permit a warrantless home entry apart from the emergency-aid exception or another established exception to the warrant requirement. 593 U.S. at 198. The Court reconfirmed that officers "may enter private property without a warrant when certain exigent circumstances exist, including the need to 'render emergency assistance to an injured occupant or to protect an occupant from imminent injury.'" *Ibid.* (citation omitted). But the Court refused to extend the community caretaking doctrine to the home absent a showing that "any recognized exigent circumstances were present," stressing the "constitutional difference" between "vehicles and homes." *Ibid.* (citation omitted).

Because *Caniglia* did not address the emergency-aid exception, it offered no guidance on whether officers must have probable cause, reasonable suspicion, or some other degree of suspicion to believe emergency circumstances exist before entering a home. That division existed long before *Caniglia*, and it persists today, with courts continuing to join one side or the other. *E.g.*, *Curet*, 289 A.3d at 190. Nor is there any prospect that further consideration of *Caniglia* will

clarify the question presented; as the concurring *Caniglia* justices noted, that case did "not require [the Court] to explore all the contours of the exigent circumstances doctrine as applied to emergency-aid situations" 593 U.S. at 206 (Kavanaugh, J., concurring), and "[n]othing in today's opinion" disturbed the emergency-aid exception, *id.* at 200 (Roberts, C.J., concurring). The lower courts—including those choosing sides in the split—have taken *Caniglia* at its word, "underscor[ing] that the court's decision was not intended to undermine settled law" on that exception. *State* v. *Samoulis*, 278 A.3d 1027, 1036 (Conn. 2022); *United States* v. *Sanders*, 4 F.4th 672, 677 (8th Cir. 2021).

Indeed, as this case well illustrates, *Caniglia* has in some instances sown *greater* confusion over the standards for entering a home to provide emergency assistance. Despite *Caniglia*'s clear language abrogating community caretaking as a freestanding warrant exception, the majority read the *Caniglia* decision as *not* "ruling that the doctrine is itself unreasonable per se." Pet.App.11a. In the majority's view, *Caniglia* merely "implied that the requisite inquiry in cases where [the community caretaking doctrine] might apply is whether there were exigent circumstances rendering the entry 'reasonable.'" *Ibid.* The majority not only adhered to its community caretaking doctrine, but also applied pre-*Caniglia* caselaw permitting entry based on the equivalent of reasonable suspicion, entering the long-standing fray over the requisite degree of suspicion in emergency-aid cases. Pet.App.12a (citing *State* v. *Lovegren*, 51 P.3d 471, 476 (Mont. 2002)).

* * *

The split over *Brigham City*'s "objectively reasonable basis" standard is pervasive, with no momentum towards resolution. To resolve the split, the Court must directly clarify the quantum of belief necessary to effectuate a warrantless home entry for emergency purposes.

II. This case presents the Court with a clean opportunity to clarify the standard for entering a home in important and recurring emergency-aid scenarios.

The Montana Supreme Court's split decision here crystalizes the divide over whether the emergency-aid exception requires probable cause that an emergency exists, or whether some lesser degree of suspicion suffices.

1. Applying Montana's variant of the community caretaking doctrine, the majority distinguished between when officers are conducting "a criminal investigation [where] there must be probable cause," and when officers are "acting in a caretaker's capacity [where] an officer's reasons for a warrantless entry must be reasonable and 'totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.'" Pet.App.15a (quoting *Lovegren*, 51 P.3d 471). In the latter instance, the court reasoned, Montana applies an "exigent circumstances standard for warrantless entry," requiring "objective, specific and articulable facts from which an experienced officer would suspect that a citizen is in need of help or is in peril." Pet.App.12a-13a.

The three-justice dissent, in contrast, reasoned that "the probable cause requirement under the exigency exception is not limited to only the commission of a criminal offense but applies to whether there is probable cause to believe a person is in imminent peril and in need of help." Pet.App.24a. The majority acknowledged that this approach was "sensible" (Pt.App.15a), but deemed "the 'probable cause' requirement *** superfluous here" and "unwieldy" (Pet.App.14a-15a & n.5), holding instead that the "objectively reasonable basis" standard permits home entries based on less than probable cause—if an "officer would *suspect*" an emergency (Pet.App.16a (emphasis added)).

2. The disagreement between the majority and dissent not only tracks the broader split among the courts, but also controls the outcome of this case. If the decision is affirmed, Case's conviction will stand. If this Court reverses and clarifies that the emergency-aid exception requires probable cause to believe there is an ongoing emergency, it would require both reversal of the suppression ruling and Case's conviction, which was grounded in the evidence obtained after the officers unlawfully entered his home.

As the dissent correctly observed, "there was no probable cause to believe Case was in imminent peril and in need of immediate assistance" at the time the police invaded his home without a warrant. Pet.App.30a (McKinnon, J., dissenting). The officers responded to a call from Case's ex-girlfriend, rather than from Case himself, and "arrived at a vacant and silent residence with no signs of an active emergency in progress." Pet.App.29a (McKinnon, J., dissenting).

Critically, the officers waited nearly an hour before finally entering the residence, all the while commenting "that it was unlikely Case required immediate aid, but rather was likely lying in wait for them to commit suicide by cop." *Ibid.* The officers knew that Case had "tried suicide by cop before." *Ibid.* Their observations at the scene—including the "empty handgun holster," and fact that "Case did not respond" to their door knocks and yelling—gave the officers grounds to believe Case might again be "attempt[ing] to elicit a defensive response" from the police. Pet.App.5a; accord Doc. 55.1. That specific danger was something the police themselves controlled. Cf. *Kentucky* v. *King*, 563 U.S. 452, 462 (2011) (police cannot create the alleged exigency through unlawful entry).

The circumstances did not give rise to a "fair probability" that Case would imminently harm himself or someone else in the house. *Florida* v. *Harris*, 568 U.S. 237, 244 (2013). The officers were responding to an uncorroborated tip from an ex-girlfriend. See Pet.App.32a (McKinnon, J., dissenting) ("[A] warrantless entry into a home based on a call from an ex-girlfriend that she 'thought' she heard a 'pop,' is insufficient.")); cf. *Chamberlain*, 960 F.3d at 105. Their prior experience suggested that Case might engage the police if confronted—not that he would take his own life. The officers saw no one else in the house or signs of any active disturbance, and their decision to delay entering the home refutes any "compelling need for official action" leaving "no time to secure a warrant." *Michigan* v. *Tyler*, 436 U.S. 499, 509 (1978). Indeed, if anything, it was the officers' entry itself that created the risk of an altercation here.

The circumstances here not only make the choice between probable cause and a lesser standard outcome-determinative, but also make this case an ideal vehicle to answer questions left open by the Court's decision in *Caniglia*. In *Caniglia*, unlike in the instant case, the respondent "had forfeited the point" of whether "any recognized exigent circumstances were present." 593 U.S. at 198. The only doctrine potentially supporting the warrantless entry was the First Circuit's "'community caretaking' rule, [which went] beyond anything this Court has recognized." *Ibid.* As Justice Alito recognized, *Caniglia* left open whether "the same Fourth Amendment rules developed in criminal cases *** [are] appropriate for use in various non-criminal-law-enforcement contexts." *Id.* at 201 (Alito, J., concurring). This includes an "important category of cases that could be viewed as involving community caretaking: conducting a search or seizure for the purpose of preventing a person from committing suicide." *Ibid.* (Alito, J., concurring). It also includes the scenario posed by the Chief Justice and examined by Justice Alito: whether police could constitutionally enter the home of an elderly woman who had uncharacteristically missed a dinner date with neighbors. *Id.* at 202 (Alito, J., concurring); see also *id.* at 204 (Kavanaugh, J., concurring).

This case gives the Court a good opportunity to address "the contours of the exigent circumstances doctrine as applied to emergency-aid situations." *Id.* at 206 (Kavanaugh, J., concurring). The probable cause standard may require officers to exercise greater restraint when, as in this case, they suspect someone of seeking to goad the officers into shooting him rather than taking his own life. But that standard might well be met if someone "calls a healthcare hotline or

911 and says that she is contemplating suicide," *id.* at 207, or if an elderly person disappears "and repeatedly fails to answer his phone," *ibid.* In all events, this Court's clarification of the standard of suspicion for an emergency would provide badly needed guidance in these "important categor[ies] of cases." Cf. *id.* at 200 (Alito, J., concurring).

III. Only a probable cause standard adequately protects the core Fourth Amendment values implicated by warrantless home entries.

The "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *United States* v. *U.S. Dist. Ct.*, 407 U.S. 297, 313 (1972). The decision below contravenes this principle by "issu[ing] law enforcement an open-ended license to enter a home upon a mere reasonable suspicion." Pet.App.32a (McKinnon, J., dissenting). This Court's review is urgently needed to make clear that only the probable cause standard adequately protects the core Fourth Amendment values at issue.

A. A probable cause standard for emergency-aid situations best accords with this Court's Fourth Amendment jurisprudence.

1. The Fourth Amendment's protections "apply to all invasions on the part of the government and its employés of the sanctity of a man's home and the privacies of life." *Payton*, 445 U.S. at 585 (quoting *Boyd* v. *United States*, 116 U.S. 616, 630 (1886)). "At the very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman*, 365 U.S. at 511. To protect that right, the Fourth Amendment ordinarily requires law enforcement to obtain a warrant based

"upon probable cause" before entering a home. U.S. Const. amend. IV.

Warrantless home entries "are presumptively unreasonable," *Payton*, 445 U.S. at 586, "subject only to a few specifically established and well-delineated exceptions," *Katz* v. *United States*, 389 U.S. 347, 357 (1967). This Court has identified several types of exigent circumstances that can justify a warrantless home entry, including: (i) "hot pursuit of a fleeing suspect"; (ii) preventing the "imminent destruction of evidence"; and, relevant here, (iii) the need to give "emergency aid," where "officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." *King*, 563 U.S. at 460 (quoting *Brigham City*, 547 U.S. at 403).

In "keeping with the 'centuries-old principle' that the 'home is entitled to special protection,'" this Court has "jealously and carefully drawn" any "warrant exception permitting home entry." *Lange* v. *California*, 594 U.S. 295, 303 (2021) (quoting *Georgia* v. *Randolph*, 547 U.S. at 109, 115 (2006)). Because the probable cause requirement "has roots that are deep in our history," *Henry* v. *United States*, 361 U.S. 98, 100 (1959), this Court has routinely concluded that probable cause is required to support a warrantless entry into a home, see *United States* v. *Santana*, 427 U.S. 38, 42 (1976) (discussing "the right of police, who had probable cause to believe that an armed robber had entered a house a few minutes before, to make a warrantless entry to arrest the robber").

This principle ought to control when police are assessing an emergency as much as when they are investigating criminal activity. As Justice McKinnon

recognized in her dissent here, "[t]here is nothing novel about requiring probable cause before police may enter a person's home without a warrant." Pet.App.30a. Rather, requiring probable cause is the only way to make sure the police carry their "heavy burden *** when attempting to demonstrate an urgent need that might justify warrantless searches." *King*, 563 U.S. at 474 (quoting *Welsh* v. *Wisconsin*, 466 U.S. 740, 749-750 (1984)). The alternative is the exact "open-ended license to enter a home without a warrant" that the Fourth Amendment was enacted to prevent. Pet.App.32a (McKinnon, J., dissenting); cf. *Lange*, 594 U.S. at 303 (this Court is "not eager—more the reverse—to print a new permission slip for entering the home without a warrant").

2. Montana (and similar jurisdictions) go astray by failing to treat the "emergency-aid exception" as a category of exigent circumstance. As with any other recognized exigent circumstance, a warrantless entry to provide emergency aid must still be supported by probable cause.

a. While some courts mistakenly describe the "emergency-aid exception" as distinct from exigent circumstances, this Court's precedents confirm it is simply a *form* of exigent circumstances. In *King*, for example, this Court "identified several exigencies that may justify a warrantless search of a home," listing "the 'emergency aid' exception" as its first example. 563 U.S. at 460. *Brigham City* likewise explained that "[o]ne exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury." 547 U.S. at 403. More recently, *Caniglia* again identified "the

need to 'render emergency assistance to an injured occupant or to protect an occupant from imminent injury'" as an "exigent circumstance[]." 593 U.S. at 198.

b. That doctrinal distinction matters because this Court has never endorsed a two-tier framework for evaluating warrantless home entries under exigent circumstances. Instead, this Court has *already* held that the probable cause standard applies across *all* such entries. In *Minnesota* v. *Olson*, this Court reviewed a decision by the Minnesota Supreme Court holding that a warrantless entry under exigent circumstances required "*at least probable cause* to believe that one or more of the *** factors justifying the entry were present." 495 U.S. at 100 (emphasis added). As this Court observed, that is the "proper legal standard." *Ibid.* Courts like the D.C. Circuit properly read that holding as applying to all kinds of exigent circumstances—including the need to offer emergency assistance. *Corrigan*, 841 F.3d at 1030. Indeed, *Corrigan* specifically relied on *Minnesota* v. *Olson* when holding that probable cause is required under the emergency-aid exception, explaining that "[w]hen relying on an exigent circumstances exception to the warrant requirement, the officers must have 'at least probable cause to believe that one or more of the *** factors justifying entry were present.'" *Ibid.* (quoting *Olson*, 495 U.S. at 100).

3. The reasons offered by the Montana Supreme Court and other courts for adopting a lesser standard are unpersuasive.

In suggesting that "the probable cause element is 'superfluous'" (Pet.App.14a), the majority associated the standard solely with "criminal investigation" and whether "criminal activity" is afoot (Pet.App.15a).

That reasoning is refuted by *Olson*, which held that the probable cause standard applies more broadly. And while the Eighth Circuit suggests there is no "blanket rule for all cases of 'exigency' or 'exigent circumstances,'" *Quarterman*, 877 F.3d at 800, *Olson* rejected the notion that some exigent circumstances may be treated differently.

Some courts have grounded a lesser standard for exigent circumstances in *Brigham City*, reasoning that it "did not require" or use the phrase "probable cause." *Gambion-Zavala*, 539 F.3d at 1225. But *Brigham City* did not use the phrase "reasonable suspicion" either, and it describes emergency aid as a category of exigent circumstances, which implicates *Olson*'s probable cause standard, 547 U.S. at 402. Nor was it necessary for the Court to specify probable cause in *Brigham City*. The officers there clearly possessed it after personally witnessing multiple adults trying to restrain a juvenile, who "struck one of the adults in the face," causing the adult to "spit[] blood into a nearby sink." *Id.* at 401. Given those facts, there was no reason for the Court to assess probable cause or distinguish it from reasonable suspicion; the officers had first-hand knowledge of the unfolding "melee." *Id.* at 400-401.

The same is true of *Fisher*, where law enforcement "found a household in considerable chaos: a pickup truck in the driveway with its front smashed, damaged fenceposts along the side of the property, and three broken house windows, the glass still on the ground outside." 558 U.S. at 45-46. "The officers also noticed blood on the hood of the pickup and on clothes inside of it, as well as on one of the doors to the house" and "could see respondent, Jeremy Fisher, inside the

house, screaming and throwing things." *Ibid.* Those first-hand observations once again gave the officers probable cause to believe that their entry was needed to "quell the violence." *Ibid.*

Given the facts and circumstances known to the officers, then, neither *Brigham City* nor *Fisher* can be read to adopt a suspicion standard less rigorous than probable cause. The better reading, as articulated by *Corrigan*, is instead that *Brigham City* and *Fisher* align with this Court's previous cases holding that only probable cause may support a warrantless entry into the home. See 841 F.3d at 1030.

B. A probable cause standard best balances the core privacy interest in our homes against the exigencies of emergency situations.

The standard governing these sorts of warrantless entries is important. "[W]hen it comes to the Fourth Amendment, the home is first among equals." *Florida* v. *Jardines*, 569 U.S. 1, 6 (2013). If probable cause is not required, then the rights of American citizens to be "secure" in their homes may be overcome whenever the police have mere reasonable suspicion of an emergency. That rule would both weaken the protection afforded the home and increase the risk of a violent, avoidable confrontation.

To see why, one need look no further than the facts and circumstances here. Courts routinely apply the emergency-aid exception in the context of mental health or welfare checks. While many such entries are justified, not all are. As one court rightly put it, "there is not a suicide exception to the warrant re-

quirement; there is an exigent circumstances exception. The self[-]harm must still be exigent." *United States* v. *Christy*, 810 F. Supp. 2d 1219, 1269 (D.N.M. 2011), aff'd, 739 F.3d 534 (10th Cir. 2014). That requirement matters most where, as here, the officers had objective facts indicating that there was *not* an immediate emergency warranting entry into the home. While a "sizable percentage" of the United States' population experiences mental health issues, those individuals "do not give up all rights to Fourth Amendment protection." *Ibid.*

Allowing home entries on less than probable cause also poses a serious risk of harm to both occupants and the officers seeking to aid them. Precisely because people view their homes as their castles, there is a "substantial risk" of a violent confrontation "that is inherent at any time anyone enters another's home without permission." *United States* v. *Carter*, 601 F.3d 252, 254 (4th Cir. 2010). That risk is pronounced where, as here, the police know the occupant is armed, upset, and spoiling for a fight. Indeed, the principal Montana case relied upon by the majority involved a suicide-by-cop situation in which "a welfare check on a suicidal individual's home *** culminated in his death." Pet.App.18a (discussing *Est. of Frazier*, 484 P.3d 912).

Nor is the risk of violent confrontation limited to legitimate welfare calls like these. Decades ago, then-Chief Judge Burger observed that "[f]ires or dead bodies are reported to police by cranks where no fires or bodies are to be found." *Wayne* v. *United States*, 318 F.2d 205, 212 (D.C. Cir. 1963). Today, such "cranks" terrorize and even kill victims through "so-called

swatting calls, which entail contacting law enforcement" with a false emergency to create "a frantic armed police response to frighten, harass and endanger someone at their home." D. Barrett & N. Haberman, *Several Trump Administration Picks Face Bomb Threats and "Swatting"*, N.Y. Times, Nov. 27, 2024, https://www.nytimes.com/2024/11/27/us/politics/trump-administration-picks-bomb-threats.html; see also *Finch* v. *Rapp*, 38 F.4th 1234, 1238 (10th Cir. 2022) (individual killed by police after fake emergency call).

While officers "do not need ironclad proof" of an imminent threat to someone's life," *Fisher*, 558 U.S. at 49, requiring probable cause to believe that such a threat exists—and will be aided, rather than exacerbated by their entry—can avoid creating an emergency in the name of addressing one. Probable cause "provides the relative simplicity and clarity necessary to the implementation of a workable rule" that is "essential to guide police officers." *Dunaway* v. *New York*, 442 U.S. 200, 213-214 (1979). By applying that standard to emergency-aid situations, officers and residents alike will have greater certainty that the threat is imminent and will actually be remedied by the drastic measure of a warrantless entry.

CONCLUSION

For the foregoing reasons, certiorari should be granted.

Respectfully submitted,

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DECEMBER 2024

APPENDIX

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APPENDIX A

DA 23-0136

In The Supreme Court Of The State Of Montana

2024 MT 165

STATE OF MONTANA,

Plaintiff and Appellee,

v.

WILLIAM TREVOR CASE,

Defendant and Appellant.

APPEAL FROM: District Court of the Third Judicial District, In and For the County of Anaconda-Deer Lodge, Cause No. DC-21-100 Honorable Kurt Krueger, Presiding Judge

COUNSEL OF RECORD:

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Submitted on Briefs: February 14, 2024
Decided: August 6, 2024

Filed:

s/ Bowen Greenwood
Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1. Trevor Case appeals a February 24, 2023 judgment from the Third Judicial District Court, Deer Lodge County, following a December 8, 2022 jury verdict of Assault on a Peace Officer, a felony, in violation of § 45-5-210, MCA.

¶2. We restate the issues on appeal as follows:

Issue One: Did the District Court err in denying Case's motion to suppress evidence obtained pursuant to a warrantless entry into his home?

Issue Two: Did the District Court abuse its discretion in denying Case a new trial based on an alleged Brady *violation?*

FACTUAL AND PROCEDURAL BACKGROUND

¶3. Law enforcement responded to Case's home on September 27, 2021, after receiving a report from his ex-girlfriend, J.H., that Case had threatened suicide during a phone call with her that evening.

¶4. J.H. had assumed Case was drinking during the phone call because he was acting "erratic." She became concerned when Case stated that "he was going to get a note or something like that" and planned to commit suicide. After attempting and failing to deescalate the conversation, J.H. heard a "clicking" that sounded like a cocking pistol. J.H. told Case she was going to call the police, and Case threatened harm to any officers that came to his home if she did. J.H. continued pleading with Case until she heard a "pop" and "thought he pulled the trigger, because it was just dead air." The phone call did not disconnect, but Case was unresponsive. After

reporting the call to the police, J.H. immediately drove to Case's home.

¶5. Three officers, Captain Dave Heffernan, Sergeant Richard Pasha, and Officer Blake Linsted, initially responded to Case's home. J.H. arrived at the scene shortly thereafter and described Case's threats to the officers. When she was asked whether she was "concerned about [Case] and possibly what he'd done to himself," she replied "Absolutely."

¶6. Heffernan called Chief Bill Sather for assistance because of the threats of harm to officers and the otherwise delicate nature of the situation. The officers did not consider obtaining a warrant to enter Case's home because "it wasn't a criminal thing. [They] were going in to assist him." Sather arrived at the scene approximately 30 minutes after the other officers.

¶7. Case did not respond to the initial door knock, nor did he respond when officers knocked on and yelled through an open window where a light was on. Meanwhile, Pasha and Linsted peered through each of Case's windows to look for evidence of an injury, indications that Case needed help, or signs of danger. All the officers could see through the windows were empty beer cans, an empty handgun holster, and a notepad on a table.

¶8. The officers were hesitant to enter Case's home because of J.H.'s report that Case had threatened them harm. Additionally, they were familiar with Case's history of alcohol abuse and mental health issues. The officers were aware, for example, that Case had previously threatened suicide at the local school where he taught, and the school was locked down because he had a weapon. Case's

coworkers eventually confiscated his vehicle and the weapon so Case could not hurt himself. Another time, officers responded to Georgetown Lake where Case was reportedly under the influence and acting erratically in his parked truck. When officers arrived, Case generally acted obstinately and refused to exit his vehicle. After eventually stepping out, Case quickly reached back into the truck against the officers' warnings. The officers perceived Case's behavior as an attempt to elicit a defensive response, i.e., a "suicide-by-cop."

¶9. Before entering Case's home, Heffernan thus returned to the station to retrieve a ballistic shield for protection. Pasha and Linsted retrieved qualified personal long barrel guns from their patrol car because they have customized fits, they are equipped with lights and optics, and the officers are generally more comfortable using them in dangerous situations.

¶10. Sather made the decision to enter Case's home roughly forty minutes after the officers first arrived.

¶11. The officers opened the unlocked front door, announced themselves, and continued to loudly identify themselves as they moved through Case's home. Heffernan left the ballistic shield on a sofa immediately after entering the home, due to its bulk. The officers were reportedly "yelling the whole time" they were in the home to continue announcing themselves. While the officers were clearing the first floor, they again saw the holster and notepad they had seen from outside, upon which was written what "looked like a suicidal note." Heffernan and Sather then moved to the basement, where Case kept his bedroom, while Pasha and Linsted moved upstairs.

¶12. As Pasha moved through an upstairs bedroom, Case "jerked open" a closet curtain. Pasha observed a "dark object" near Case's waist, and instantaneously aimed at and shot Case in the abdomen. Case fell to the floor, and Linsted entered the room and immediately began administering first aid. As Heffernan and Sather came into the room moments later, Heffernan noticed and secured a handgun that was lying in a laundry hamper just outside the closet, next to Case.

¶13. As Linsted helped Case to the ambulance outside, Sather secured both Pasha and Case's firearms and immediately called the State Department of Criminal Investigation (DCI) for instructions on next steps.

¶14. Pasha testified at both the suppression hearing and at trial that he was nervous the entire time he was in Case's home. He testified that when he saw the curtain flash open, he saw Case with an "aggressive like look on his face" and "gritted" teeth. Pasha saw what appeared to be a black object coming out of the curtain, and further testified that he believed the object was a gun and that he was about to be shot.

¶15. On October 1, 2021, Case was charged by Information with Assault on a Peace Officer. The Information was amended on December 15, 2021, to further provide that Case "knowingly or purposefully caused reasonable apprehension of serious bodily injury in Sgt. Richard Pasha when he pointed a pistol at Sgt. Richard Pasha."

¶16. Case filed three pretrial motions on December 17, 2021: a motion to dismiss for lack of probable cause, a motion in limine to suppress

evidence of prior bad acts, and a motion to suppress all evidence obtained by law enforcement in its "illegal search and seizure of Defendant and his residence."

¶17. On January 5, 2022, the State filed a second amended information, clarifying the charge that Case "knowingly or purposefully caused reasonable apprehension of serious bodily injury in Sgt. Richard Pasha when he pointed a pistol, *or what reasonably appeared to be a pistol*, at Sgt. Richard Pasha." (Emphasis added.)

¶18. Following a February 14, 2022 hearing, Case's request to exclude any evidence related to an altercation at the 7 Gables Bar (Georgetown) was granted. Otherwise, his motions to dismiss and suppress were denied.

¶19. During trial, Pasha testified that he had previously been shot at when responding to a crime scene. He further testified that it contributed to his hesitance to enter Case's home. Case did not ask Pasha about this incident on cross-examination.

¶20. The jury returned a guilty verdict on December 8, 2022.

STANDARD OF REVIEW

¶21. Our review of constitutional questions is plenary. *State v. Ilk*, 2018 MT 186, ¶ 15, 392 Mont. 201, 422 P.3d 1219 (citation omitted). We review the factual findings underlying a district court's denial of a motion to suppress for clear error, and we review the application of those facts to relevant laws for correctness. *State v. Wakeford*, 1998 MT 16, ¶ 18, 287 Mont. 220, 953 P.2d 1065 (citation omitted). Whether a motion for a new trial was properly denied is

reviewed for an abuse of discretion. *Ilk*, ¶ 15 (citation omitted).

DISCUSSION

¶22. On appeal, Case argues the District Court erred by denying his motion to suppress evidence obtained after the officers entered his home without a warrant. Case further contends the District Court abused its discretion by denying his motion for a new trial when the State did not disclose that Pasha was shot at during an investigation three months prior to entering Case's home.

¶23. *Issue One: Did the District Court err in denying Case's motion to suppress evidence obtained pursuant to a warrantless entry into his home?*

¶24. In Montana, a peace officer's warrantless entry into an individual's home is per se unreasonable because citizens are afforded an expectation of privacy and protection from unlawful searches and seizures in their homes. U.S. Const. amend. IV; Mont. Const. art. II, §§ 10, 11; *State v. Stone*, 2004 MT 151, ¶ 18, 321 Mont. 489, 92 P.3d 1178.

¶25. We have adopted a few narrow exceptions to that general rule. An individual may knowledgeably and voluntarily consent to a search, for example. *State v. Rushton*, 264 Mont. 248, 257, 870 P.2d 1355, 1361 (1994) (citation omitted). Additionally, a warrantless search may be lawful if there are both exigent circumstances and probable cause for violation of a criminal statute. *Stone*, ¶ 18 (citing *State v. Saxton*, 2003 MT 105, ¶ 26, 315 Mont. 315, 68 P.3d 721); *see also Wakeford*, ¶ 22. A third category of exceptions includes welfare checks arising

under the community caretaker doctrine, when a peace officer acts on a duty to promptly investigate situations "in which a citizen may be in peril or need some type of assistance from an officer." *Estate of Frazier v. Miller*, 2021 MT 85, ¶ 16, 404 Mont. 1, 484 P.3d 912 (citations omitted).[1]

¶26. A warrantless entry under Montana's community caretaker doctrine is unique from the other exceptions in that the circumstances giving rise to a welfare check on an individual in their home specifically *may not* implicate a criminal investigation. *Frazier*, ¶ 17 (citations omitted); Mont. Const. art. II, §§ 10, 11.

¶27. The United States Supreme Court recently expounded on the propriety of the community caretaker doctrine in *Caniglia v. Strom*, 593 U.S. 194, 141 S. Ct. 1596 (2021). There, Edward Caniglia sued law enforcement in a civil action after police officers searched his home and confiscated firearms inside

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[1] The Dissent, ¶ 58, argues that the community caretaker doctrine "is not an exception to the warrant requirement." The premise stems from our statement in *State v. Lovegren* that "this category of interaction with police 'does not involve any form of detention at all and, therefore, does not involve a seizure.'" Dissent, ¶ 58 (citing *State v. Lovegren*, 2002 MT 153, ¶ 16, 310 Mont. 358, 51 P.3d 471). We have repeatedly described the community caretaker doctrine as an exception to the warrant requirement. *Frazier*, ¶ 16; *Lovegren*, ¶¶ 14-16. Citizens maintain their rights to privacy—and thus protection from unreasonable entry into their homes—regardless of whether a seizure has occurred. In the event officers enter a home pursuant to their caretaker duties, a seizure does not occur unless and until a situation escalates into a criminal investigation. *State v. Nelson*, 2004 MT 13, ¶ 6, 319 Mont. 250, 84 P.3d 25 (citing *Lovegren*) ("Montana's version of the community caretaker doctrine. . . morphs into a seizure or an arrest because of an escalation of events which develop after the initial inquiry.").

without a warrant or consent.[2] *Caniglia*, 593 U.S. at 196-97, 141 S. Ct. at 1598. The First Circuit Court of Appeals ruled in favor of the State, premising its decision upon the community caretaker doctrine and Caniglia's threats of suicide. *Caniglia v. Strom*, 953 F.3d 112, 122-33 (1st Cir. 2020). The Supreme Court reversed, distinguishing the heightened protections individuals are afforded in their homes as opposed to motorists on public highways. *Caniglia*, 593 U.S. at 198-99, 141 S. Ct. at 1599 (citing *Cady v. Dombrowski*, 413 U.S. 433, 93 S. Ct. 2523 (1973)).

¶28. Case argues that *Caniglia* forbids our application of the community caretaker doctrine in a citizen's home, averring that the only circumstance where a peace officer may enter a home without a warrant or consent is when there are both exigent circumstances and probable cause for violation of a criminal statute. We are not persuaded by Case's narrow view of peace officers' caretaker obligations.

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[2] During an argument with his wife, Caniglia placed a pistol on the table and asked her to "shoot [him] and get it over with." *Caniglia*, 593 U.S. at 196, 141 S. Ct. at 1598. Caniglia's wife left and spent the night in a hotel. *Caniglia*, 593 U.S. at 196, 141 S. Ct. at 1598. When the wife was unable to reach Caniglia by phone in the morning, she called the police and requested a welfare check. *Caniglia*, 593 U.S. at 196-97, 141 S. Ct. at 1598. Responding officers ultimately persuaded Caniglia to go to the hospital for a mental health evaluation, but only after stipulating that they would not confiscate his firearms. *Caniglia*, 593 U.S. at 197, 141 S. Ct. at 1598. Once Caniglia left for the hospital, the officers confiscated firearms inside the home. *Caniglia*, 593 U.S. at 197, 141 S. Ct. at 1598. Caniglia ultimately sued under an unconstitutional search and seizure theory. *Caniglia*, 593 U.S. at 197, 141 S. Ct. at 1598. The First Circuit determined the officers had lawfully discharged their duties under the community caretaker doctrine. *Caniglia*, 593 U.S. at 197, 141 S. Ct. at 1598-99.

¶29. The *Caniglia* Court articulated its concern that permitting warrantless entries broadly under the community caretaker doctrine risks encompassing actions that violate citizens' Fourth Amendment rights. *Caniglia*, 593 U.S. at 198, 141 S. Ct. at 1599. Indeed, as Case suggests here, an ordinary citizen would be afforded less protection from unreasonable entries than a criminal if *every* circumstance suggesting that a welfare check *might* be prudent was constitutionally permissible. Without ruling that the doctrine is itself unreasonable per se, the Court implied that the requisite inquiry in cases where it might apply is whether there were exigent circumstances rendering the entry "reasonable." *Caniglia*, 593 U.S. at 198, 141 S. Ct. at 1599; *see also*, *Caniglia*, 593 U.S. at 204-05, 141 S. Ct. at 1602-03 (Kavanaugh, J., concurring) ("the Court's decision does not prevent police officers from taking reasonable steps to assist those who are inside a home and in need of aid. . . police officers may enter a home without a warrant in circumstances where they are reasonably trying to prevent a potential suicide. . ..").

¶30. *Caniglia* established that the Fourth Amendment requires reasonable exigency to enter a home, and probable cause for any seizure after that point. Unlike the situation here, there was no exigency in *Caniglia* to justify the officer's entry, given Caniglia had voluntarily left his home for a psychiatric evaluation by the time officers entered his home and seized his weapons. *Caniglia*, 593 U.S. at 196-97, 141 S. Ct. at 1598.

¶31. Our jurisprudence around the community caretaker doctrine is sufficiently narrow that it comports with *Caniglia* and aligns with Montana's heightened privacy protections. Mont.

Const. art. II, § 10. In Montana, the doctrine may only apply when an officer's warrantless entry is "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Frazier*, ¶ 17 (quoting *Lovegren*, ¶ 17). In such cases, there is neither a search nor seizure that would implicate Article II, Section 11, of the Montana Constitution. While an individual is entitled to a right to privacy in their home, a warrantless entry is permissible if it is reasonable given the facts and circumstances. *Caniglia*, 593 U.S. at 198, 141 S. Ct. at 1599 ("To be sure, the Fourth Amendment does not prohibit all unwelcome intrusions 'on private property,' *ibid.*—only 'unreasonable' ones.").[3]

¶32. We thus apply a three-factor test to determine whether the application of the community caretaker doctrine is reasonable:

> First, as long as there are objective, specific and articulable facts from which an experienced officer would suspect that a citizen

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[3] The Dissent, ¶ 56, opines that we "misapprehend[] *Caniglia*" because there, the U.S. Supreme Court "held that the community caretaker doctrine is *not* a standalone exception to the warrant requirement and did not permit warrantless entries into personal residences." (Emphasis in original.) While the *Caniglia* Court drew an important distinction between caretaker stops on public roadways and warrantless entries into individuals' homes, the Dissent fails to reconcile *Caniglia's* acknowledgment that the community caretaker doctrine may yet justify a warrantless entry into a home when exigent circumstances do, in fact, exist. *Caniglia*, 593 U.S. at 198, 141 S. Ct. at 1599. While the Dissent strains the facts to downplay the exigency that led to the officers' warrantless entry here, a comprehensive reading of the record indicates exigent circumstances were present.

> is in need of help or is in peril, then that officer has the right to stop and investigate. Second, if the citizen is in need of aid, then the officer may take appropriate action to render assistance or mitigate the peril. Third, once, however, the officer is assured that the citizen is not in peril or is no longer in need of assistance or that the peril has been mitigated, then any actions beyond that constitute a seizure implicating not only the protections provided by the Fourth Amendment, but more importantly, those greater guarantees afforded under Article II, Sections 10 and 11 of the Montana Constitution as interpreted in this Court's decisions.

Lovegren, ¶ 25.

¶33. The first two prongs of our community caretaker test mirror the Ninth Circuit Court of Appeals' exigent circumstances standard for warrantless entry, but for the key fact that in Montana, a welfare check may not justify a warrantless entry in response to criminal activity alone.[4] Our cases have established that in cases involving crime, only exigent circumstances and probable cause together will justify a warrantless

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[4] The Ninth Circuit held "We now adopt a two-pronged test that asks whether: (1) considering the totality of the circumstances, law enforcement had an objectively reasonable basis for concluding that there was an immediate need to protect others or themselves from serious harm; and (2) the search's scope and manner were reasonable to meet the need." *United States v. Snipe*, 515 F.3d 947, 952 (9th Cir. 2008). Similar exigent circumstances standards are applied widely through the other circuits. *See Snipe*, 515 F.3d 947 at 952-53, and the standard is consistent with the U.S. Supreme Court's ruling in *Caniglia*.

entry. *See Stone*, ¶ 18 (citing *Saxton*, ¶ 26); *see also Wakeford*, ¶ 22. When a warrantless entry is wholly divorced from a criminal investigation and is otherwise reasonable, like here, the probable cause element is "superfluous" and should not impede an officer's duty to ensure the wellbeing of a citizen in imminent peril. *Snipe*, 515 F.3d at 952.[5]

¶34. The Dissent posits that distinguishing criminal and non-criminal exigencies is "confusing and unnecessary," Dissent, ¶ 56. We find it essential to make sense of the probable cause element that our cases have incorporated into the exigent circumstances standard, ostensibly as a safeguard to Montanans' heightened right to privacy. Contrary to the Dissent's assertion, Dissent, ¶ 56, our caselaw does not yet have a "framework" for law enforcement to address situations like this, where probable cause that a crime has occurred simply does not exist despite a "need to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." *Caniglia*, 593 U.S. at 198, 141 S. Ct. at 1599. In these scenarios, our "exigent circumstances plus probable cause" standard is

[5] The Ninth Circuit *did not* "recogniz[e] the requirement of both probable cause and exigency" in *Snipe*, as asserted by the Dissent, ¶ 63. Rather, the *Snipe* court described the probable cause element as "superfluous," because it may be "assumed that probable cause to associate the emergency with the place to be searched exists whenever law enforcement officers have an objectively reasonable basis for concluding that an emergency is unfolding in that place." *Snipe*, 515 F.3d at 952. We agree that the "probable cause" requirement would be superfluous here, too, because the record reflects an "objectively reasonable basis" for finding that an emergency was unfolding.

unwieldy and risks grave consequences for individuals in need of care.

¶35. Rather than attempt to reconcile the conflict, the Dissent advances a sensible but unprecedented formulation of law, asserting that "the probable cause requirement under the exigency exception is not limited to only the commission of a criminal offense but applies to whether there is probable cause to believe a person is in imminent peril and in need of help." Dissent, ¶ 56. The lack of authority for this position is telling, given we have only ever applied the probable cause standard to determine whether the facts "are sufficient to warrant a reasonable person to believe that the suspect *has committed an offense*." *Stone*, ¶ 18 (emphasis added).

¶36. Our formulation of the community caretaker doctrine encompasses non-criminal situations where a warrantless entry is essential to ensure the wellbeing of a citizen, but that would otherwise be forbidden for lack of criminal activity and probable cause. We are not issuing law enforcement "an open-ended license to enter a home upon a mere reasonable suspicion." Dissent, ¶ 66. When officers are engaged in a criminal investigation, there must be probable cause to justify a warrantless entry. *Stone*, ¶ 18. When acting in a caretaker's capacity, an officer's reasons for a warrantless entry must be reasonable and "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Lovegren*, ¶ 17.

¶37. The third and final *Lovegren* prong asks whether the officers took "any actions beyond [which would] constitute a seizure . . . ." *Lovegren*, ¶ 25. As

discussed below, this third step is a central part of our discussion because the officers' actions following their entry into Case's home undoubtedly constituted a seizure, for which the analysis must "morph" from the community caretaker doctrine to the Fourth Amendment and Article II, Sections 10 and 11, of the Montana Constitution. *See Nelson* ¶ 6 (citing *Lovegren*).

¶38. Applying the *Lovegren* factors here, the officers were acting on "objective, specific, and articulable facts from which an experienced officer would suspect that a citizen is in need of help." *Lovegren*, ¶ 25. The officers responded to a report of a potentially intoxicated, suicidal male in possession of a firearm that had possibly been discharged in his home. When the officers arrived, they peered through Case's windows to look for evidence of injury. The officers could see empty beer cans, an empty holster, and a notepad. All signs were consistent with their impression that Case was suicidal and potentially intoxicated, which was further corroborated by J.H.'s description of her phone call with Case. The officers were aware of Case's history with law enforcement, suicidal episodes, and alcohol abuse; thus, they took a cautious view of the situation prior to carrying out Sather's order to enter Case's home. The officers were likewise aware that, while on the phone with J.H., Case referenced a "note" and potentially discharged a firearm. An experienced officer would similarly assess present circumstances, reconcile them with prior knowledge of the individual, and formulate a plan to render aid accordingly.

¶39. Further, the actions the officers took were appropriate for mitigating peril. The officers were aware of the likelihood a firearm was on the

premises, given J.H.'s report and the empty holster. The officers repeatedly announced their presence before and after entering the home, shouting that they were only there to help. Case never responded. There is no indication that the officers' entry and subsequent walk through the premises exceeded what was necessary to ensure their own safety and establish Case's wellbeing. After weighing the inherent risk of the situation against their caretaker obligations, the officers appropriately swept Case's home with firearms drawn.

¶40. Immediately after Pasha shot Case, the officers began taking actions that "would constitute a seizure implicating the Fourth Amendment and Article II, Section 11, of the Montana Constitution." *Lovegren*, ¶ 25. The officers' presence in the home thus "morphed" from a welfare check to an arrest, for which probable cause would ordinarily be required. *Nelson*, ¶ 6; U.S. Const. amend. IV; Mont. Const. art. II, §§ 10, 11. "[P]robable cause is established if the facts and circumstances within an officer's personal knowledge, or related to the officer by a reliable source, are sufficient to warrant a reasonable person to believe that another person is committing or has committed an offense." *State v. Williamson*, 1998 MT 199, ¶ 21, 290 Mont. 321, 965 P.2d 231. The jury unanimously decided that Case "knowingly or purposefully caused reasonable apprehension of serious bodily injury in Sgt. Richard Pasha when he pointed a pistol, or what reasonably appeared to be a pistol, at Sgt. Richard Pasha." Before the welfare check morphed into an arrest, Case had thus assaulted Pasha, and probable cause had accordingly ripened for an arrest.

¶41. Reflecting the uniqueness of the circumstances here—and the narrowness of the exception—we have only applied the caretaker doctrine to the warrantless entry of a home on one other occasion.[6] *Frazier* involved a welfare check on a suicidal individual's home that culminated in his death. Our decision recounted the following details:

> Miller and Roselles arrived at the house with their patrol car's lights off. In order to ensure their own safety and preliminarily assess the situation, the officers each patrolled around one side of the house. Because all the shades were drawn, however, the officers were not able to gather any additional information. Officer Roselles finished checking his section of the perimeter first. He stepped onto the front porch and knocked on the door several times, to no response. At about this time, Officer Miller joined Officer Roselles on the porch by the front door. Officer Roselles then turned the doorknob and opened the front door a few inches. At this point, Frazier responded, yelling at the officers that they did not have the right to be there, to close the door, and to get out of the house and go away. Frazier also stated that he was "fine." Neither officer could see Frazier at this point—only hear him.

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[6] We have applied the exigent circumstances exception to cases involving the warrantless entry of a domicile (upon probable cause of criminal conduct) on numerous occasions. *See generally Wakeford* (citing *State v. Sorenson*, 180 Mont. 269, 590 P.2d 136 (1979)); *see also State v. Smith*, 2021 MT 324, ¶ 24, 407 Mont. 18, 501 P.3d 398 (citing *State v. Saale*, 2009 MT 95, ¶ 10, 350 Mont. 64, 204 P.3d 1220). We have also analyzed warrantless searches and seizures of vehicles under the community caretaker doctrine. *See generally Lovegren; Nelson; Stone*.

Officer Roselles backed off the front porch and called dispatch, attempting to obtain additional information that might justify a warrantless entry or the phone number for Frazier's parents, so that he might obtain consent to enter the house. Dispatch could not provide him with either.

. . .

By the time Officer Roselles finished his call, Officer Miller had pushed the front door fully open; in doing so, his hand reached inside Frazier's home. At the time he pushed the door open, Miller still could not see Frazier. At this point, Officer Roselles turned on his body-camera and took a position slightly behind Officer Miller by the front door. Frazier then quickly stepped in front of the doorway, holding a pistol to his own head; in response, Officer Miller immediately drew and presented his service pistol. Still holding his pistol to his head, Frazier repeatedly begged the officers to shoot him. Officer Miller attempted to de-escalate the situation and told Frazier to put his gun down, but Frazier ignored his requests and continued to ask the officers to shoot him. While Officer Miller was still attempting to calm the situation, Frazier moved his gun's barrel away from his head and toward Officer Miller stating, "Suicide by cop, I know all about it." Officer Miller then fired three rounds from his pistol, all striking Frazier, who collapsed to the floor. The officers attempted first aid, to no avail.

Frazier, ¶¶ 5-6. Frazier's estate sued the State, alleging assault, wrongful death, negligence by Miller, and a violation of Frazier's rights under the Montana Constitution. *Frazier*, ¶ 7. Applying the community caretaker doctrine, we determined the officers' entry was constitutionally permissible, and that "it would have been 'a dereliction of [duty]' had the officers ignored Frazier's call or simply walked away when he called out that he was 'fine.'" *Frazier*, ¶ 25 (citing *Lovegren*, ¶ 26).

¶42. Although the entry here did not result in Case's death, the basis for Sather's decision to enter Case's home is analogous to *Frazier*. "The officers here were responding to a threat of imminent suicide, a non-criminal but imminently perilous situation in which immediate action is often necessary." *Frazier*, ¶ 23. Although the officers in *Frazier* ultimately did not enter the home other than to push the front door open, that was only because Frazier responded to their presence and they did not need to sweep the home. The officers' decision to do so here was calculated, and it was appropriate to mitigate the risk of Case's suicide or potential injury.

¶43. The District Court did not err when it denied Case's motion to suppress evidence obtained pursuant to a warrantless entry.

¶44. *Issue Two: Did the District Court abuse its discretion in denying Case a new trial based on an alleged Brady violation?*

¶45. Case argues the District Court should have granted him a new trial because the State failed to disclose potentially exculpatory evidence that Pasha had been shot at on another case, roughly three months before his entry into Case's home. The State

counters that this argument was not properly raised below, thus the District Court acted within its discretion to deny Case a new trial. The State argues further that Case cannot meet his burden to show a *Brady* violation occurred, and it should therefore be denied even if we consider its merits on appeal. *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963).

¶46. Criminal defendants have a due process right to discover exculpatory evidence. *Brady*, 373 U.S. at 87, 83 S. Ct. at 1196-97. Exculpatory evidence includes evidence that is favorable to the accused and material either to guilt or to punishment. *State v. Stutzman*, 2017 MT 169, ¶ 28, 388 Mont. 133, 398 P.3d 265 (citation omitted). "To prove a due process violation under *Brady*, a defendant must show: (1) the State possessed evidence, including impeachment evidence, favorable to the defense; (2) the prosecution suppressed the favorable evidence; and (3) had the evidence been disclosed, a reasonable probability exists that the outcome of the proceedings would have been different." *Ilk*, ¶ 29.

¶47. We disagree with the State that this issue was not properly preserved for appeal. While Case did not raise the *Brady* issue until he filed the reply brief to his motion for a new trial, the State and the District Court were given an opportunity to address it. On January 30, 2023, the State briefed its response to Case's *Brady* arguments in State's Response to Defendant's New Issues in Reply Brief in Support of Motion for a New Trial. On February 9, 2023, the District Court ruled against Case on the issue in its Order Denying Motion for New Trial.

¶48. While a "reply brief must be confined to new matters raised in the brief of the appellee[,]" the

principles underlying the "raise or waive rule" aim to ensure fairness to parties, ensuring each has "an opportunity to respond to [new matters] factually." M. R. App. P. 12(3); *State v. West*, 2008 MT 338, ¶ 17, 346 Mont. 244, 194 P.3d 683 (citations omitted). Despite Case's procedural missteps, the State had an opportunity to respond here.

¶49. Regardless of any procedural issues, we prefer to resolve cases on their merits. *In re Estate of Mills*, 2015 MT 245, ¶ 12, 380 Mont. 426, 354 P.3d 1271 (citation omitted).

¶50. Case has not met his burden to show that a *Brady* violation has occurred. The outcome of the proceedings would not have been different if the State had disclosed evidence about the timing of Pasha's prior incident. *Ilk*, ¶ 29.[7]

¶51. Case asserts that "Even though the individual officers [sic] mental state isn't the standard, it is a factor considered by the jury." Case argues that evidence specifically about when Pasha was shot at might have led the jury to conclude that Pasha was apprehensive before he stepped into Case's home, that he shot at "movement" rather than "an identified individual possessing what the officer reasonably believes to be a weapon," and that element of the crime thus logically could not have been satisfied.

¶52. The jury was tasked with determining whether Case "purposely or knowingly caus[ed] reasonable apprehension of serious bodily injury in a

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[7] During Case's December 5, 2022 jury trial, Pasha testified: "I was recently involved in a case not too long prior to this where I was shot at."

peace officer by use of a weapon or what reasonably appear[ed] to that peace officer to be a weapon." The "reasonable person" standard is objective. *State v. Michelotti*, 2018 MT 158, ¶ 27, 392 Mont. 33, 420 P.3d 1020 (citation omitted). Pasha's personal experiences have no bearing on whether his apprehension of fear, or perception that Case possessed what appeared to be a weapon, was objectively reasonable. If the jury were instructed to apply a standard incorporating individualized elements, like Pasha's individual experiences, it would be subjective and inconsistent with the law. *Michelotti*, ¶ 27.

¶53. The District Court did not err when it determined a *Brady* violation did not occur, therefore it did not abuse its discretion in denying Case a new trial.[8]

CONCLUSION

¶54. The District Court properly denied Case's motion to suppress evidence obtained after officers responding to his threat of suicide entered his home without a warrant. The officers acted in accord with their caretaker obligations when they entered Case's home, and they acted upon probable cause that Case had assaulted Pasha when they detained him. Likewise, the District Court did not abuse its

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[8] We decline to separately address the merits of Case's argument that there was insufficient evidence to support his conviction of assault on a peace officer. Viewing the evidence in the light most favorable to the prosecution, Pasha's testimony regarding the "dark object," coupled with the actual presence of a handgun, was sufficient to support the conviction. *State v. Kirn*, 2012 MT 69, ¶ 10, 364 Mont. 356, 274 P.3d 746 (citation omitted); *see also State v. Steele*, 2004 MT 275, ¶ 33, 323 Mont. 204, 211, 99 P.3d 210 ("A person need not actually see a weapon to feel threatened by use of that weapon.").

discretion in denying Case a new trial. Case failed to demonstrate that the outcome would have been different had evidence that Pasha was shot at three months prior been introduced by the State.

¶55. Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ JIM RICE

Justice Laurie McKinnon dissenting.

¶56. I dissent. I think the Court's analysis is confusing and unnecessary. Our case law already establishes a framework for law enforcement to address situations as here. I would analyze these facts to determine whether there was probable cause to believe Case was subject to imminent harm, distress, or in need of assistance and assess the presence of exigent circumstances. In my opinion, the probable cause requirement under the exigency exception is not limited to only the commission of a criminal offense but applies to whether there is probable cause to believe a person is in imminent peril and in need of help. It is a standard law enforcement is trained to assess. For a warrantless search to be reasonable, probable cause must remain a necessary component in the analysis. The Court incorrectly extends the community caretaker doctrine, which derives from law enforcement's interactions with pedestrians and vehicles, to the warrantless entry of a home. In doing so, the Court misapprehends *Caniglia*, which held that the community caretaker doctrine was *not* a standalone exception to the

warrant requirement and did not permit warrantless entries into personal residences. Finally, after applying the appropriate analytical framework, I would conclude there was not sufficient probable cause or exigent circumstances which would justify the warrantless entry into Case's home.

¶57. The Fourth Amendment to the United States Constitution and Article II, Section 11, of the Montana Constitution protect the right of the people to be secure in their persons, homes, and effects against unreasonable searches and seizures. The "very core" of this guarantee is the right of a person to retreat into their home and within the sanctity of that home be free from unreasonable governmental intrusion. *Florida v. Jardines*, 569 U.S. 1, 6, 133 S. Ct. 1409, (2013). Warrants issued upon probable cause prior to a search by law enforcement satisfy the reasonableness requirement and safeguard the sanctity of the home against arbitrary invasions by governmental officials. "The home is the most sanctified of all 'particular places'" referred to in the Fourth Amendment and Article 11, *State v. Graham*, 2004 MT 385, ¶ 22, 325 Mont. 110, 103 P.3d 1073, and "it is for that reason that the exceptions to the warrant requirement are, concomitantly, jealously guarded and carefully drawn," *State v. Ellis*, 2009 MT 192, ¶ 73, 351 Mont. 95, 210 P. 3d 144. These exceptions include: (1) consent, freely and voluntarily given, *State v. Bieber*, 2007 MT 262, ¶ 29, 339 Mont. 309, 170 P.3d 444; (2) a search incident to a lawful arrest, *State v. Hardaway*, 2001 MT 252, ¶ 24, 307 Mont. 139, 36 P.3d 900 (citing § 46-5-102, MCA); and (3) exigent circumstances coupled with probable cause, *State v. Stone*, 2004 MT 151, ¶ 18, 321 Mont. 489, 92 P. 3d 1178. *Ellis*, ¶ 73.

¶58. The community caretaker doctrine is not an exception to the warrant requirement. *Caniglia*, 593 U.S. at 194. 144 S. Ct. at 1596. In *Lovegren* we noted several "categories" of "police-citizen encounters" and observed some do "not involve any form of detention at all and, therefore, does not involve a seizure." *State v. Lovegren*, 2002 MT 153, ¶¶ 13-16, 310 Mont. 358, 51 P.3d 471. In this Court's first recognition of the community caretaker doctrine within the context of a vehicle encounter, we drew from *Cady*, which explained the justification for the doctrine:

> Because of the extensive regulation of motor vehicles and traffic, and also because of the frequency with which a vehicle can become disabled or involved in an accident on public highways, the extent of police-citizen contact involving automobiles will be substantially greater than police-citizen contact in a home or office. Some such contacts will occur because the officer may believe the operator has violated a criminal statute, but many more will not be of that nature. Local police officers, unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.

Cady v. Dombrowski, 413 U.S. 433, 441, 93 S. Ct. 2523, 2528. The Supreme Court recently expressed that while *Cady* involved a warrantless search of a firearm, "the location of that search was an

impounded vehicle–not a home–'a constitutional difference' that the [*Cady* Court] "repeatedly stressed." *Caniglia*, 593 U.S. at 197, 141 S. Ct. at 1599. "In fact, Cady expressly contrasted its treatment of a vehicle already under police control with a search of a car 'parked adjacent to the dwelling place of the owner." *Caniglia*, 593 U.S. at 199, 141 S. Ct. at 1599, quoting *Cady*, 413 U.S. at 446-448. Thus, the Court held the distinction between vehicles and homes places the community caretaker doctrine in the proper context and that recognition these tasks for officers exists is "not an open-ended license to perform them anywhere." *Caniglia*, 593 U.S. at 199,141 S. Ct. at 1600.

¶59. The Court gives no effect to *Caniglia*, which grants greater Fourth Amendment protections than the Court's decision today. In fact, the Court misguidedly attributes the "premise" of my position that the community caretaker doctrine is not an exception to the warrant requirement to *Lovegren*. Opinion, ¶ 25 n.1. However, *Lovegren* said nothing about the community caretaker doctrine in the context of a home. *Lovegren* identified different categories of encounters and recognized some did not involve any detention at all. *Lovegren*, ¶ 16.

¶60. Prior to the Court's decision in *Caniglia*, this Court applied the *Lovegren* community caretaker doctrine to hold the warrantless entry into the home of a suicidal person was justified and, like "plain view and exigent circumstances," was an exception to the warrant requirement. *Frazier*, ¶ 28. While in *Frazier* there clearly was probable cause to believe Frazier was suicidal and there were present exigent circumstances justifying a warrantless entry, our reasoning was inconsistent with what *Caniglia*

subsequently held. Here, rather than draw consistently from *Caniglia*, the Court extends the community caretaker doctrine to circumstances specifically disavowed by the Supreme Court: "The question today is whether *Cady*'s acknowledgment of these 'caretaking' duties creates a standalone doctrine that justifies warrantless searches and seizures in the home. It does not." *Caniglia*, 593 U.S. at 196, 144 S. Ct. at 1596.

¶61. The only exception to the warrant requirement applicable here is whether there were exigent circumstances present and probable cause to believe a person is in danger. "Exigent circumstances for conducting a warrantless search exist 'where it is not practicable to secure a warrant.'" *State v. Bassett*, 1999 MT 109, ¶ 47, 294 Mont. 327, 982 P.2d 410. We have defined "exigent circumstances" as those circumstances that "would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other person, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts." *State v. Gomez*, 2007 MT 111, ¶ 24, 337 Mont. 219, 158 P. 3d 442.

¶62. In my opinion, the record does not support the presence of exigent circumstances. Upon arrival, and after looking through the windows, officers saw a notebook with a handwritten entry they could not read, but assumed it was a suicide note. They also observed through the windows an open beer can and a holster. While conferring about how to proceed, Sergeant Pasha stated, "if we go in there, we gotta be careful man, just in case he didn't actually shoot himself" and then admitted Case might not be

in immediate need of aid, by stating "I'm scared that maybe he didn't actual shoot himself, because he can't and he's tried suicide by cop before, and he like left us all this so we're gonna go in the house and . . . he is going to pull a gun on us." All the officers on the scene stated that it was unlikely Case required immediate aid, but rather was likely lying in wait for them to commit suicide by cop. Here the officers arrived at a vacant and silent residence with no signs of an active emergency in progress. They were not responding to a call from Case himself requesting immediate assistance. More telling as to the lack of exigency, the officers waited nearly an hour before making entry. In contrast to *Fisher*, where the officers observed a man screaming and throwing things through a window from the outside, the officers here made no observations of Case. In contrast to *Snipe*, where the door had been left open, the officers here entered through a closed and latched door. In every case involving exigent circumstances, the response from law enforcement was expedited and not delayed. I would conclude that the State has not met its burden of demonstrating the presence of exigent circumstances.

¶63. The Ninth Circuit in *Snipe*, recognizing the requirement of both probable cause and exigency, held that "both the Second and Eleventh Circuits h[ave] held that "'in an emergency, the *probable cause* element may be satisfied where officers reasonably believe a person is in danger.'" *United States v. Snipe*, 515 F.3d, 947 at 952 (emphasis supplied). *See United States v. Holloway*, 290 F.3d 1331, 1338 (11th Cir. 2002); *Koch v. Brattleboro*, 287 F.3d 162, 169 (2d Cir. 2002). In fact, the court in *Snipe*, explaining the Supreme Court's decision in *Brigham City v. Stuart*,

547 U.S. 398, 126 S. Ct. 1943, (2006), held "the [Supreme Court] assumed that *probable cause* to associate the emergency with the place to be searched exits whenever law enforcement officers have an objectively reasonable basis for concluding that an emergency is unfolding in that Place." *Snipe*, 515 F.3d at 951 (emphasis supplied). The Court reasons that, because probable cause pertains only to criminal matters, the requirement of probable cause to believe a person is in peril coupled with exigent circumstances is an "unprecedented formulation of the law," Opinion, ¶ 35. But this position is starkly contrary to both the Supreme Court's recent holding in *Caniglia* and ample other precedent. Probable cause is not limited to assessing the likelihood a criminal offense has been or is being committed—it is the touchstone for inquiries under both the federal and Montana Constitution of whether the warrantless entry into a person's home is reasonable. There is nothing novel about requiring probable cause before police may enter a person's home without a warrant.

¶64. I would conclude that there was no probable cause to believe Case was in imminent peril and in need of immediate assistance. This Court has addressed facts that establish the reasonableness of a warrantless entry into the home and probable cause to believe there was an emergency. In *State v. Loh*, 275 Mont. 460, 474, 914 P. 2d 592, 601 (1996), we concluded officers' warrantless entry into Loh's home was lawful given that they responded to a home that was engulfed in smoke and were told at the scene there were possibly two more people inside the home. We explained, quoting *Michigan v. Tyler*, 436 U.S. 499, 509, 98 S. Ct. 1942, 1950, (1978):

> A burning building clearly presents an exigency of sufficient proportions 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 a blaze. And once in a building for this purpose, firefighters may seize evidence of arson that is in plain view.

Loh, 275 Mont. at 474, 914 P.2d at 592. Similarly, we concluded in *State v. Lewis*, 2007 MT 295, ¶¶ 20-21, 28-29, 340 Mont. 10, 171 P.3d 731, that the warrantless entry of officers "prompted by the exigent circumstances of a fire, was lawful."

¶65. The probable cause here came from an ex-girlfriend who was arguing with Case over the phone when Case ended the call. The ex-girlfriend called the police to report that he "was threatening suicide and the phone just went silent, and she didn't get a response;" and that "he said he had a loaded gun, and all I hear was clicking and, I don't know, I thought I heard a pop at the end, I don't know." The request for law enforcement assistance came, not from the person needing assistance, but from an ex-girlfriend. While law enforcement was required to follow-up on this information, the information did not give them an open-ended license to enter a home without a warrant.

¶66. The Court extends the *Lovegren* community caretaker doctrine to a warrantless home entry, a situation specifically disavowed by the Court in *Caniglia*. It applies an awkward test not consistent with Montana's heightened right of privacy and establishes a *new* exception to the warrant

requirement based on an "objectively reasonable basis." This new exception improperly extends the *Lovegren* doctrine, a doctrine based on *Terry* and particularized or reasonable suspicion, to the warrantless entry of a home. It relieves law enforcement of their obligation to assess the presence of probable cause to believe a warrantless entry is required to address an emergency within the home and, in its place, issues law enforcement an open-ended license to enter a home upon a mere reasonable suspicion. The only relevant exception to the warrant requirement requires an exigency and probable cause, which the Court obfuscates completely in its analysis. Further, the Court finds the presence of exigent circumstances on bare bone circumstances—where assistance was not requested by Case and when no officer observed any signs of an emergency, even after being there for nearly an hour. After applying the standard of probable cause to the determination of whether an emergency exists which requires immediate police action to prevent imminent harm, injury, or distress, I would conclude there was no probable cause for an emergency. In my opinion, a warrantless entry into a home based on a call from an ex-girlfriend that she "thought" she heard a "pop," is insufficient. The only true exception to the warrant requirement relevant here, is the presence of exigent circumstances and probable cause. I would find neither present here.

/S/ LAURIE McKINNON

Justice Ingrid Gustafson and Justice Dirk Sandefur join in the Dissent of Justice McKinnon.

/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR

APPENDIX B

Montana's Third Judicial District
Anaconda – Deer Lodge County

STATE OF MONTANA, Plaintiff, v. WILLIAM TREVOR CASE, Defendant.	CAUSE NO. DC 21-100 **ORDER ON MOTIONS**
ORDER ON MOTIONS	

Before the Court are Defendant's Motion to Dismiss, Motion to Suppress, and Motion in Limine. The Motions are fully briefed, and a hearing was held on Monday, February 14, 2022. Matters in this case arise from events that took place the night of September 27, 2021, when the Anaconda Deer Lodge County Police Department (ADLC PD) went to the Defendant's home to conduct a welfare check after receiving a phone call from Jennifer Harris with concerns that the Defendant was attempting to commit suicide with a gun. Officers searched the outside and inside of Defendant's home and came upon the Defendant exiting a closet. The State alleges that in response to Defendant's movement and presence of appeared to be a weapon, Officer Pasha opened fire on the Defendant. The Defendant was charged with one count of Assault on a Peace Officer.

Defendant moves the Court to dismiss the charges against him contending the State does not

have sufficient evidence to establish probable cause for the crime of Assault on a Peace Officer. Specifically, the Defendant argues there is a lack of evidence establishing Sargent Pasha knew the Defendant had a weapon until, at the earliest, the State's case-in-chief has concluded before moving to dismiss. The State also rebuts the Defendant's assertion that there is insufficient evidence to support a finding of probable cause. For reasons stated at the Motions Hearing, the Motion is DENIED.

Defendant moves the Court to suppress evidence obtained as a result of a warrantless search. Defendant argues the ADLC PD entered his home without a warrant and asserts their entry did not fall under any warrant exception allowed under Montana law. Defendant argues there were no exigent circumstances as evidenced by the length of time the ADLC PD took to enter the home. The State claims there were exigent circumstances allowing the police to enter the Defendant's home and argues the response was immediate and responsive under the circumstances. For reasons stated at the Motions Hearing, the Motion is DENIED.

Defendant moves the Court in limine to exclude any evidence referencing the Defendant's involvement in a bar fight at the Seven Gables that occurred in 2018. Defense also moves to exclude evidence of prior bad acts. The State does not oppose to the exclusion of the 2018 Seven Gables incident but opposes the Motion regarding evidence of prior bad acts. For the reasons stated at the Motions Hearing, the Motion is Granted in-part and DENIED in-part. The Seven Gables incident is excluded, and evidence of the Defendant's prior bad acts are allowed but remain subject to the Montana Rules of Evidence.

The Motion to Dismiss is DENIED, the Motion to Suppress is DENIED, and the Motion in Limine is GRANTED in-part and DENIED in-part.

February 17, 2022

Hon. Ray J. Dayton
District Court Judge

APPENDIX C

Montana's Third Judicial District
Anaconda – Deer Lodge County

STATE OF MONTANA, Plaintiff, v. WILLIAM TREVOR CASE, Defendant.	CAUSE NO. DC 21-100
Transcript of Proceedings **February 14, 2022** **(Motions Hearing)**	

PRESIDING: THE HONORABLE RAY J. DAYTON

DATE: February 14, 2022

PLACE: Courthouse – Deer Lodge County
Anaconda, MT 59711

APPEARANCES:

Ben Krakowka, County Attorney
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Attorney for Defendant.

haven't seen a case law yet that indicates that 40 minutes in any definition would be considered prompt or immediate regardless of the circumstances faced by the officers. Um, so, I just don't believe that exigent qualifies with that significant of a wait.

COURT PROCLAMATION:

THE COURT: Alright. Alright uh, I think I said at the beginning of this hearing I wasn't going to rule from the bench, but I am. Uh, it's, it's clear what I have to do.

Uh, number one uh, on the Motion to Dismiss-- the Motion to Dismiss the gist of it is uh, unlike the Affidavit, uh the facts, this is the argument now, the State's, or Defense Argument. The Affidavit is clear enough uh, uh between, well, the Information's now been twice amended, but State came to the Judge and said, let us file a criminal case against Trevor Case. Uh, we want to charge him with Assault uh, on, on a Peace Officer. Uh, they -- the cops got called. Trevor Case was talking about suicide. The cops went up there. Ultimately, they went in the house and Trevor Case jumped out of a closet, pointed a gun at Pasha and he shot him. That's how it started, okay.

Uh, and so leave to file the Information was granted. Uh, Discovery occurs, uh information is gathered, uh, uh statements are taken, body cams looked at and the Defense makes a Motion to Dismiss saying unlike the Affidavit in Support of Leave to File uh, there, there isn't uh, any probable cause here uh, because all of the elements of the crime of Assault on a Peace Officer, as charged in this case, uh are-- they're not all here. All the elements are not here. You've got to have, you got to have each element.

I'm, I'm kind of distilling your argument maybe crammed two or three arguments into one, but it's the gist, because when Pasha was talking on the video and was talking to DS..., or DCI when uh, other statements were made, you know, uh and they're enumerated in the brief. Uh, there's no weapon. The weapon is missing is kind of the gist of the argument. And there's others, you know, he couldn't-- uh, Pasha had to have been reasonably apprehensive uh, because of the weapon, not because -- and use of a weapon. I guess distinguishing it from a statement that there's a weapon. You know, girlfriend said there's a weapon. Girlfriend might have heard a shot. She heard a pop. Uh, you know, she heard what sounds like maybe chambering a round into a pistol. Uh, you know, that's not the same thing as uh, uh he turned with a gun, pointed it at me and I shot him.

So, I came in here today uh, to listening very carefully uh, to evidence. I hadn't seen the body cam uh, video before. You know, now's the time, you know, to look at that for purposes of a Motion to Dismiss uh, and uh, in the -- well, uh and I, I wanted to listen very carefully because I wasn't sure what I was going to do with this legal argument that the State was making that this doesn't matter for today, because that kind of a motion is premature. As long as I had probable cause in the Affidavit, that's enough to get me to the opportunity to present my case in chief. And if Defense wants to raise the uh, issue about whether or not there's any evidence of uh, uh, you know, a probability that there was apprehension brought about by the use of a weapon or whether there was a weapon, you know, then they can make it then uh, to attack the elements of the charge.

And, you know, the cases do say that. Uh, there's a lot of cases that say that. Uh, and like so many things uh, in the law I find myself saying things like, is that the law? You know, uh because when you look at -- well, you can pick of any kind of uh, examples uh, you, you can make them up where uh, all in good faith a prosecutor has a witness that says, you know, he came at me with a knife. Uh, and so, I -- oh, okay, he came at you with a knife. We'll charge him with Assault with a Weapon. Uh, and then, you know, during the run up to the case uh, run up to the trial uh, the witness says, I lied. It was a different guy, a different about the weapon. I was just mad at him, and I lied. Well, I think a prosecutor would at that point dismiss uh, but you know, if the prosecutor were to choose to say anything, you get a Motion to Dismiss. That's not what the witness said something different now. There, there's a recantation. I mean even then can't I grant a Motion to Dismiss? I have to go trial uh, and have that witness come in and say, yeah, I lied? I mean, I mean there must be situations where a Judge could say case dismissed. You know, the, the, the evidence just didn't materialize. It's not nothing like the Affidavit, I'm not describing this case, but there, there must be a case, you know, there must cases where a Judge could do that.

You know, interestingly uh, and I didn't pour over it this time, over the years you get an opportunity to look at things from all kinds of different angles, but you know the, the Motion to Dismiss in a criminal case is hard to grab a..., on to. I mean there's a statute that says, you know, if, if justice so requires, a Judge can dismiss a case. But it doesn't talk about the procedure of a Defendant making a Motion to Dismiss and, you know, where..., whether that's at trial,

whether it's before trial, whether it's after the case in chief, you know, it's just so much less well defined in the criminal law than in the civil law. Uh, so it's, it's kind of a squishy process.

But I don't know that that's uh, that concern that I have about, do I have to let the State uh, present a case in chief before I can analyze a defendant uh, pro testation, a Motion to Dismiss. Uh, uh I don't know that I -- I don't think I have to worry too long about that here in the light of the hearing, because Sergeant Pasha came in here, sat here, said I saw what looked to be a gun. It was a black thing. Uh, it was before I shot. I -- it, it made me afraid. Uh, the elements are there if a jury wants to believe it. So, Motion to Dismiss denied. Probable cause exists both in the Affidavit and from uh, the hearing that we've had here today. Probable cause is a long way from a reason..., beyond a reasonable doubt. We all understand that, but we're on a Motion to Dismiss. Motion to Dismiss denied.

Motion to Suppress, Motion to Suppress is based upon the fact that there was uh, a warrantless entry uh, into the house. Uh, that to the extent that evidence was seized without the warrant or uh, derivative of things that happened before a warrant. You know uh, generally speaking without a warrant it, it's, it's no good. It's got to stay out. There are exceptions.

You know we can slice the bologna as thin as we want about exigency versus emergency, you know, and different statutory definitions in different context, but police department got a call. They got a call about Trevor Case. No stranger to the Anaconda-Deer Lodge County Department of Law Enforcement.

Uh, you know, prior things have gone on, but just on the face of it without any of that uh, Jen Harris, apparently a former girlfriend uh, says that we were in a conversation. He was upset. He was emotional uh, and uh, in the end he said, I'm going to kill myself. I have a gun. Uh, she hears what is inter..., interpretational uh, as the uh chambering of a round in a pistol and then a pop, which may have been a gunshot. That's what her concern was clearly that maybe it was a gunshot, maybe he killed himself. Got to do something. Off goes Linsted and Pasha. Off goes uh, uh Captain Heffernan uh, you know, and so, is that an emergency? Is that exigency? Yes, it is, clearly.

In this house, you know, they knew from the conversation, from the call, there's Jennifer Harris, or Jen Harris, you know, she comes to the scene before they go in. Well, yeah, I guess before she got there, they were shining lights in there to see if they could see a dead body. See if they see a guy with a gun. You know there uh, there's an exigency. They had to go in that house. They had to go in that house.

The Defense's concern seems to be more that uh, they didn't act like it was very exigent. It took 40 minutes, or 35 minutes, or 30 minutes before they, you know, went in to look for him. Well, not really true. They were looking for him, but it's not just an exigency. It's not just a guy. What they were working was ju..., not just a guy uh, who said I'm, or, or a person who said there's a guy in there whose threatened suicide, he might have killed himself. He might've shot himself. He, he-- you know, when the call was made that created the exigency.

Now, I might want if my wife called uh, from somewhere else and said, geez I think my husband's having a heart attack at the house. Uh, I would hope Dave Heffernan comes in, you know, and busts my door down and comes and drags me out to the ambulance right away. But if they said, Dave, Ray's in the house and he's got a gun and he said he's going to shoot ya. Well, then I would expect them to use more caution rather than just going in.

Whether or not it was too slow, too fast, whatever, you know, uh I, I almost said hindsight's clearer than foresight by a damn sight, but that's what we always do in trials. That's what we always do in criminal cases. We're always micro analyzing uh, analyzing uh, you know, Monday morning uh, after the game. But that micro analysis here says, yes for the purpose of whether or not there was an exigency when they went in because they still didn't know was he in there? Was he dead? Was he waiting for them? Was he gonna do it the suicide by cop thing? You know, what was going to happen? They had to be careful. But it was an exigent circumstance. They went into the house without a warrant. Uh, does not render what came as a result of that inadmissible. The Motion to Suppress is denied.

And we've talked about the Motion in Limine.

MR. KRAKOWKA: Yes, your honor.

THE COURT: Such is the order of the Court. Court is adjourned.

MR. KRAKOWKA: Thank you your honor.

COURT REPORTER: All rise.

CONCLUSION

CERTIFICATE OF TRANSCRIPTIONIST

I, Ann Allen, Official Court Transcriptionist of the District Court of the Third Judicial District of the State of Montana, in and for the Counties of Granite, Anaconda-Deer lodge and Powell, after having been duly sworn,

DO HEREBY CERTIFY:

That the foregoing proceedings were electronically recorded using an FTR Recording System.

That the recording has been in the custody of the Court.

That the recording has not been changed or altered in any way.

That the recording is a full, true and accurate record of these proceedings.

That the undersigned arranged to have the recording transcribed to writing.

That the undersigned has compared the tape recording with the requested written transcription and the foregoing 217 pages constitute a full, true and accurate transcription of the above-entitled proceedings had and taken in the above-entitled matter at the time and place hereinabove mentioned.

Witness my hand this 23rd day of February, 2022.

/s/ Ann M. Allen
Ann. M. Allen
Official Court Reporter