Fourth Amendment Reasonableness: Why Utah Courts Should Embrace the Community Caretaking Exception to the Warrant Requirement

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I. INTRODUCTION

¶1 The Fourth Amendment provides protection from unreasonable governmental intrusion:

> 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.[1]

The sanctity of the home results in heightened constitutional protection.[2] A warrantless entry or search of a residence is per se unreasonable under the Fourth Amendment, "subject only to a few specifically established and well-delineated exceptions."[3] Both the United States Supreme Court and Utah's appellate courts recognize exigent circumstances as one such exception to the warrant requirement.[4]

¶2 Courts define exigent circumstances as "those 'that would cause a reasonable person to believe that entry . . . was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.'"[5]

¶3 A more recently created exception to the Fourth Amendment's ban on warrantless searches is known as the community caretaker doctrine.[6] In such cases, law enforcement officers perform "dual community caretaking functions of aiding persons in need of assistance and protecting property."[7] While exigent circumstances apply in the crime-fighting context, the community caretaker doctrine applies when "police are not engaged in crime-solving activities."[8] This exception is governed by a reasonableness standard: "Given the known facts, would a prudent and reasonable officer have perceived a need to act in the proper discharge of his or her community caretaking functions?"[9]

¶4 While some appellate courts have also recognized the emergency aid doctrine as an additional valid exception to the warrant requirement of the Fourth Amendment,[10] they have disagreed as to how it should be classified. The emergency aid doctrine has been viewed both as "a variant of the exigent circumstances doctrine"[11] and as "a subcategory of the community caretaking exception."[12] The doctrine permits "police officers [to] enter a dwelling without a warrant to render emergency aid and assistance to a person whom they reasonably believe to be in distress and in need of that assistance."[13]

¶5 These three concepts—exigent circumstances, community caretaking, and the emergency aid doctrine—are closely related, and courts do not always clearly distinguish between them. A case handed down by the Utah Court of Appeals demonstrates this confusion. *State v. Comer*, decided June 27, 2002, rejected the trial court's use of the emergency aid doctrine but upheld a warrantless entry by police under a very liberal application of the exigent circumstances exception to the Fourth Amendment.[14]

¶6 This article argues that improper application of the exigent circumstances exception in this case resulted, at least in part, from a misunderstanding of the exigent circumstances, community caretaking, and emergency aid doctrines. This misunderstanding stems partially from the Utah Court of Appeals' narrow interpretation of the community caretaking exception. Part II provides important background information by examining separately the exigent circumstances exception, the community caretaking exception, and the emergency aid doctrine. Part III summarizes the view of Utah courts on the community caretaking and emergency aid exceptions. Part IV analyzes the *Comer* decision, concluding that 1) the court should have expanded its view of the community caretaking exception, 2) the officers' actions were justified under the community caretaking exception, and 3) the court's exigent circumstances analysis was improper. Part V offers a brief conclusion.

II. EXIGENT CIRCUMSTANCES, COMMUNITY CARETAKING, AND EMERGENCY AID

A. The Exigent Circumstances Exception

¶7 "The Fourth Amendment to the United States constitution has drawn a firm line at the entrance to the home, and thus, the police need both probable cause to either arrest or search and exigent circumstances to justify a nonconsensual warrantless intrusion into private premises."[15]

¶8 Probable cause to search exists when there is "a fair probability that contraband or evidence of a crime will be found,"[16] and probable cause to arrest requires "facts and circumstances within the officer's knowledge that are sufficient to warrant a prudent

person . . . believing, in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense."[17] Exigent circumstances have been described 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 persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts."[18] When both probable cause and exigent circumstances exist, the exigent circumstances exception justifies warrantless searches. As the probable cause requirement demonstrates, however, exigent circumstances analysis is appropriate only when officers act in a criminal investigatory capacity.[19]

B. The Community Caretaking Exception

¶9 More recently, courts have begun to recognize the community caretaking exception[20] to the warrant requirement, which is distinct from the exigent circumstances exception. In the 1999 case *People v. Ray*, the California Supreme Court recognized the duties of peace officers to perform community caretaking functions unrelated to crime-fighting: "[O]ur contemporary society . . . is an impersonal one. Many of us do not know the names of our next-door neighbors. Because of this, tasks that neighbors, friends or relatives may have performed in the past now fall to the police."[21] The court acknowledged that one legitimate role of police officers is to respond to requests of people who seek police assistance because they are concerned about the safety or welfare of their friends, loved ones, and others and that "circumstances short of a perceived emergency may justify a warrantless entry."[22] Approving a police entry made with intent to safeguard property and to search for citizens in distress, the *Ray* court

concluded that "[w]hen officers act in their properly circumscribed caretaking capacity, we will not penalize the People by suppressing evidence of crime they discover in the process."[23]

¶10 California is not alone in its adoption of a community caretaking exception to the warrant requirement. In 2001, New Mexico allowed the community caretaking function to "properly take its place in our jurisprudence as an exception to the Fourth Amendment warrant requirement."[24] Utah has also approved the caretaking exception in a limited sense, allowing for its application in traffic stops involving "imminent danger to life or limb."[25] Like Utah, the United States Supreme Court has acknowledged legitimate community caretaking functions in the context of vehicle seizures and searches, but the Court has yet to decide directly whether the community caretaking exception extends to warrantless searches of homes.[26]

¶11 The California Supreme Court has provided the standard by which warrantless entries made pursuant to community caretaking functions should be judged:

> When the police cross a threshold not in their criminal investigatory capacity but as part of their community caretaking function, it is clear that the standard for assessing the Fourth Amendment propriety of such conduct is whether they possessed a reasonable basis for doing what they did. Professor LaFave explained . . . "An objective standard as to the reasonableness of the officer's belief that it is necessary to act must be applied." Thus, the question is . . . whether there is "evidence which would lead a prudent and reasonable official to see a need to act." *The officer must "be able to point to specific and articulable facts which, taken with rational inferences from those facts, reasonably warrant that intrusion*."[27]

¶12 Courts consider the level of intrusion itself when determining whether police action was reasonable.[28] This basic reasonableness standard governs warrantless entries made

for community caretaking purposes, including intent to render emergency aid.[29] Probable cause and exigent circumstances analysis is not implicated when officers are not motivated by crime-solving intentions.[30] Thus, officer intent at the time of entry is a significant consideration when determining whether the community caretaking exception applies,[31] and courts require officers to act in good faith, meaning that the officer's entry cannot be a pretext for the investigation of criminal activity.[32] Moreover, the officer's actions must be objectively reasonable, meaning that he must have a reasonable belief, based on articulable facts, that a person is in need of immediate assistance or protection from harm.[33]

¶13 The good faith requirement also limits the scope of searches made pursuant to the community caretaking exception: "[E]ntry must be limited to the justification therefore, and the officer may not do more than is reasonably necessary to determine whether a person is in need of assistance, and to provide that assistance."[34] The warrantless entry and subsequent search "must be suitably circumscribed to serve the exigency which prompted it."[35] Nevertheless, "once the veil of the home has been legally pierced, [there is] no need for police officers to turn a blind eye to crime, so long as the arrest is otherwise effected in compliance with the constitutional requirement of probable cause (and any other relevant state law criteria)."[36]

C. The Emergency Aid Doctrine

¶14 Originally dictum in *Johnson v. United States*,[37] the emergency aid doctrine has since received approval in numerous federal opinions.[38] In *Wayne v. United States*,[39] Judge Burger detailed his reasons for allowing the emergency aid doctrine to serve as an

exception to the warrant requirement.[40] Judge Burger described the emergency aid doctrine and the exigent circumstances exception as "two streams of potential authority for entry" and noted that "at a point they merge."[41] Sensitive to the fine line between the two concepts, Judge Burger explained,

> [t]he record is confusing partly because a situation of this kind is filled with confusion and ambiguity. If we could expect that patrolmen from police cruisers would be able to pinpoint the instant when they stopped treating this as a civil emergency, if they did, and began thinking of it in criminal terms, we would be asking them to resolve, under pressure and in minutes, a most subtle and delicate legal and constitutional problem on which, as we now demonstrate, judges cannot agree after months of study and deliberation.[42]

¶15 Judge Burger proposed that either doctrine justifies a warrantless entry and search so long as it is reasonable under the circumstances, and "[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency."[43] In fact, Judge Burger suggested that officers have an affirmative duty to act in emergency situations.[44]

¶16 Courts have struggled with the classification of the emergency aid doctrine, some labeling it a variation of the exigent circumstances exception[45] and others arguing that it falls within the community caretaking exception.[46] In *People v. Ray*, the California Supreme Court noted that, when viewed in terms of officer intent, rendering emergency aid is clearly a community caretaking function divorced from crime-fighting.[47] Because community caretaking duties motivate officers seeking to render emergency aid, classification of the emergency aid doctrine as a variation of the exigent circumstances exception is improper. This analytical distinction also explains why courts do not require probable cause when evaluating community caretaking acts including rendering

emergency aid; instead the inquiry is governed by the Fourth Amendment mandate that officers act reasonably.

¶17 The United States Supreme Court itself has recognized the emergency aid doctrine[48] as a valid exception to the Fourth Amendment's warrant requirement:

> We do not question the right of the police to respond to emergency situations. Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid.[49]

¶18 Although the Supreme Court has approved of the emergency aid exception, details of the doctrine can only be found in the opinions of other courts. For example, in *United States v. Barone*, the Second Circuit conditioned the application of the emergency aid exception to cases in which peace officers entered and investigated "without the accompanying intent to either search or arrest."[50] Following this logic, courts often examine the subjective intent of the officers at the time of the warrantless entry when assessing whether application of the emergency aid doctrine is proper.[51]

¶19 Some courts have established tests to determine whether the emergency aid doctrine applies. Perhaps the best-known test was established by the New York Court of Appeals in *People v. Mitchell*:

> The basic elements of the exception may be summarized in the following manner:
> (1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property.
> (2) The search must not be primarily motivated by intent to arrest and seize evidence.
> (3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.[52]

¶20 Since emergency aid presents a greater urgency than other caretaking functions, courts generally permit a greater degree of intrusion upon privacy when the *Mitchell* test is satisfied.[53]

III. UTAH'S APPROACH TO COMMUNITY CARETAKING AND EMERGENCY AID

A. Unreasonable Analysis: Community Caretaking in Utah

¶21 The Utah Court of Appeals first considered the community caretaking exception in *Provo City v. Warden*.[54] In *Warden*, a Provo City police officer stopped a vehicle after receiving information from unidentified citizen informants that the driver indicated to them he was suicidal.[55] The court acknowledged that police officers perform legitimate community caretaking functions that are "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute," but the court neither discussed nor analyzed the community caretaking function outside of the context of a traffic stop.[56] The *Warden* court developed a test to govern when a caretaking stop satisfied the Fourth Amendment: (1) did a Fourth Amendment seizure occur?; (2) if so, "was the seizure in pursuit of a bona fide community caretaker function"?; and (3) did the circumstances objectively "demonstrate an imminent danger to life or limb?" [57]

¶22 Other than suicide prevention, the court failed to provide examples of what it considered "bona fide" caretaking functions. It did impose, however, the highly restrictive requirement that the circumstances present imminent danger to life or limb.[58] Concerned with the potential for abuse by police, the court expressly rejected

the reasoning found in cases that approved motorist caretaking stops "when an insignificant article of the driver's property was endangered or when a motorist appeared to be lost in less than life-threatening circumstances."[59] Then, almost apologetically, the court noted, "stops *which are legitimate* exercises of police community caretaker responsibilities, *but which are not 'reasonable' under the Fourth Amendment*, may result in application of the exclusionary rule, while still achieving the objectives of community caretaking."[60] In doing so, the court effectively labeled some police conduct as both legitimate *and* constitutionally unreasonable, justifying its approach as "a legitimate means of encouraging genuine police caretaking functions while deterring bogus or pretextual police activities."[61]

B. The Emergency Aid Doctrine in Utah

¶23 In addition to caretaking traffic stops, Utah case law permits warrantless searches if officers are responding to a perceived medical emergency. In *Salt Lake City v. Davidson*, the court articulated its view of the emergency aid doctrine:

> The medical emergency exception will support a warrantless search of a person or personal effects when a person is found in an unconscious or semiconscious condition and the purpose of the search is to discover evidence of identification and other information that might enhance the prospect of administering appropriate medical assistance, and the rationale is that the need to protect life or avoid serious injury to another is paramount to the rights of privacy . . . .[62]

¶24 A search pursuant to a medical emergency must satisfy all three prongs of the so-called *Mitchell* test to comport with the Fourth Amendment.[63] First, police officers must "have an objectively reasonable basis to believe that an emergency exists and believe there is an immediate need for their assistance for the protection of life."[64]

Second, the search cannot be "primarily motivated by intent to arrest and seize evidence."[65] Third, there must be "some reasonable basis to associate the emergency with the area or place to be searched. That is, there must be a connection with the area to be searched and the emergency."[66] Notably, unlike the strictly objective inquiry for caretaking stops, this approach to emergency aid requires the court to determine officers' primary motivation for initiating the search.

IV. MISSED OPPORTUNITY: *STATE V. COMER*

¶25 On June 27, 2002, the Utah Court of Appeals decided *State v. Comer*, which rejected application of the emergency aid doctrine in favor of a confused application of the exigent circumstances exception to uphold police action.[67] *Comer* ignored the important community caretaking role performed by modern day law enforcement officers while simultaneously recognizing the importance of prompt police intervention in domestic disputes.[68] The *Comer* court should have adopted a broader interpretation of the community caretaking exception and recognized that the warrantless entry in *Comer* was justified as legitimate community caretaking function that was reasonable by Fourth Amendment standards.

A. State v. Comer

¶26 After receiving a report from an identified citizen informant[69] of a family fight in progress, Brigham City Police dispatched three officers to the residence of Damon and Misty Comer.[70] Upon arrival, the officers knocked on the door, and Misty Comer answered by opening the door a few inches and stepping out onto the porch.[71] The

officers told Misty that a family fight had been reported and asked whether anyone else was in the home.[72] Misty answered that her husband was inside, and without explanation, turned and walked back into her residence.[73]

¶27 The officers entered the home behind Misty and followed her down the hallway to a bedroom doorway.[74] She informed her husband, Damon, that police were there, and everyone gathered into the front room.[75] After conducting an investigation, the officers developed probable cause to arrest Misty for domestic assault.[76] "[I]n the course of making that arrest, [officers] found drugs and drug paraphernalia."[77] As a result of this discovery, both Misty and Damon faced felony drug possession and misdemeanor paraphernalia charges.[78] In their motion to suppress evidence, the Comers argued that the officers' warrantless entry of their home violated the Fourth Amendment.[79] The trial court disagreed, concluding that the entry was justified under the emergency aid doctrine.[80] The trial court initially noted that a report of domestic violence in progress alone would not justify officers entering the Comer residence.[81] When combined with Misty's "somewhat sudden and unexplained retreat into the house," however, the trial court found a reasonable basis for the emergency entry.[82]

¶28 The Utah Court of Appeals declared the trial court's application of the emergency aid doctrine improper. Referencing the first prong of the *Mitchell* test adopted in *Davidson*, the court concluded that "the information available to the police was insufficient to support an objectively reasonable belief that an unconscious, semi-conscious, or missing person feared injured or dead might be in the Comers' home."[83]

¶29 Instead, the appellate court found justification for the officers' actions in the exigent circumstances exception to the Fourth Amendment's warrant requirement. The court did so in two steps. First, it held

> that the reliable tip by an identified citizen informant of a family fight in progress, accompanied by Misty's unexplained retreat into the home in which she acknowledged her husband was present, establish probable cause to believe that one of the legislatively defined domestic violence crimes had been or was being committed inside the home.[84]

¶30 Second, calling it a "close case," the court concluded that exigent circumstances were present:

> In light of the officers' reasonable belief that a domestic violence offense had been, or was being, committed, and the combustible nature of domestic disputes, Misty's somewhat sudden and unexplained retreat into the house could reasonably have indicated to the officers that any of a number of scenarios might be about to occur, each of which would cause an officer to reasonably believe there was no time to get a warrant and/or that his presence was necessary to prevent physical harm to persons or the destruction of evidence.[85]

¶31 Thus, the court elected to apply a broad interpretation of the exigent circumstances exception rather than the emergency aid doctrine to justify warrantless entry into the Comer residence. A better course would have been to broaden the community caretaking exception established in *Provo City v. Warden*.

B. Making the Case for the Community Caretaking Exception

¶32 Based on a very narrow view of community caretaking, the court improperly analyzed the facts in *Comer* according to the exigent circumstances exception to the Fourth Amendment. The officers were justified in making a warrantless entry because their caretaking actions were reasonable under the Fourth Amendment, despite the

significant level of intrusion resulting from police entry of a home. As noted by the Sixth Circuit, "nothing in the Fourth Amendment requires us to set aside our common sense," and the "Amendment's 'reasonableness' and warrant requirements [should not be read] as authorizing timely governmental responses only in cases involving life-threatening danger."[86]

¶33 A probable cause and exigent circumstances analysis is only proper when officers are investigating criminal activity. Utah courts should recognize that police community caretaking duties are not limited exclusively to life-threatening medical emergencies. Therefore, when the *Mitchell* test is not satisfied, the courts should ignore standard probable cause/exigent circumstances analysis. Instead, they should apply a reasonableness standard, coupled with the good faith requirement that governs community caretaking activities, to determine whether a warrantless entry was constitutional.

¶34 *Provo City v. Warden*[87] represents a view of police caretaking functions that is unnecessarily—and unrealistically—narrow. Recognizing that "legitimate" caretaking functions encompass more than just life-threatening situations, *Warden* nevertheless declared police caretaking unreasonable under the Fourth Amendment when no immediate threat of serious physical injury is apparent.[88] In short, the court simultaneously applied the incongruous labels of "legitimate" *and* "unreasonable" to all community caretaking responsibilities not involving life-threatening circumstances.

¶35 Three compelling reasons support a more expansive view of the community caretaking exception. First, the Fourth Amendment protects citizens only from

unreasonable government searches or seizures. Second, an inquiry into officer intent at the time of the search or seizure, using a reasonableness standard and requiring good faith, will serve as a check on abuse by law enforcement. Third, the exclusionary rule should not apply to "legitimate exercises of police community caretaker responsibilities."[89]

¶36 Reasonableness is the touchstone of Fourth Amendment jurisprudence.[90] "Reasonableness, in turn, is measured in objective terms by examining the totality of the circumstances."[91] The Supreme Court observed that "[t]he Fourth Amendment is not, of course, a guarantee against *all* searches and seizures, but only against *unreasonable* searches and seizures."[92] In *Bell v. Wolfish*,[93] the Court explained the reasonableness inquiry:

> The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. *Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted*.[94]

¶37 The reasonableness requirement applies to all aspects of the search, and only those searches deemed unreasonable violate Fourth Amendment protections.[95] State and federal courts alike *expect* law enforcement officers to perform community caretaking functions; therefore, community caretaking activities can provide a legitimate, reasonable, and justifiable basis to initiate a search.[96] The Fourth Amendment simply requires that, after entry, the remaining aspects of the search continue to be reasonable.

¶38 In *Warden*, the Utah Court of Appeals fashioned a three-tiered test to determine whether a community caretaker stop is constitutional, and because the court only addressed community caretaking in a traffic stop context, the first tier asks whether a Fourth Amendment seizure occurred.[97] The second tier of this test applies the objectively reasonable standard, requiring "pursuit of a bona fide community caretaker function."[98] Rather than couple this objective inquiry with mandatory good faith, the court elected to fashion the third tier of the test so as to require that "the circumstances demonstrate an imminent danger to life or limb" in order to deter "bogus or pretextual police activities."[99] This restriction effectively prohibits officers from acting in a perfectly legitimate and reasonable manner to provide assistance to citizens under anything less than life-threatening circumstances and supposedly does so to deter police misconduct.

¶39 Yet the reasonableness standard, if coupled with a good faith requirement, will provide those subject to a community caretaking search with adequate protection from abuses by police. As a general rule, courts evaluate "challenged searches under a standard of objective reasonableness without regard to the underlying intent or motivation of the officers involved."[100] Because the distinction between exigent circumstances and community caretaking turns on officer intent at the time of entry, however, the reasonableness standard applicable to the community caretaking exception is generally paired with a good faith requirement. Under California's community caretaking exception, for example, "the trial courts play a vital gatekeeper role, judging not only the credibility of the officers' testimony but of their motivations. Any intention of engaging

in crime-solving activities will defeat the community caretaking exception even in cases of mixed motives."[101]

¶40 The good faith requirement protects against abuse by police and permits other reasonable searches occurring during legitimate community caretaking activities absent a life-threatening emergency.[102] In *State v. Comer*, the Utah Court of Appeals should have, in addition to expanding the community caretaking exception to include reasonable searches of homes, altered its three-tiered *Warden* test by replacing the "danger to life or limb"[103] requirement with mandatory good faith. By doing so, the court could have maintained protections against police abuse while upholding the legality of *all* objectively reasonable searches and seizures.

¶41 Finally, the exclusionary rule need not apply in circumstances where police seek to fulfill the caretaking duties expected of them. "The exclusionary rule prohibits introduction into evidence of tangible materials seized during an unlawful search."[104] Nevertheless, courts need not invoke the rule in situations where the interests of the Fourth Amendment will not be advanced by the rule's application.[105] If application of the exclusionary rule, which is considered an "extreme sanction," will not deter police misconduct, the reviewing court need not exclude evidence.[106]

¶42 The *Warden* court failed to explain how application of the exclusionary rule to legitimate community caretaking functions deters police misconduct. The court also failed to explain how *legitimate* caretaking functions not involving "imminent danger to life or limb" are per se unreasonable. If officers, acting reasonably and in good faith, conduct a search while performing a bona fide community caretaking function, Fourth

Amendment protections remain intact and application of the exclusionary rule does not deter police misconduct. In effect, *Warden* recognizes legitimate community caretaking functions beyond those involving life-threatening circumstances, yet it penalizes officers for performing their duties by labeling all caretaking conduct per se unreasonable when there is no "imminent danger to life or limb." As demonstrated above, by incorporating a good faith requirement and by applying an objective reasonableness standard to all aspects of caretaking searches, the Utah Court of Appeals can enforce Fourth Amendment guarantees without penalizing law enforcement officers for fulfilling duties that the court itself expects of them.[107]

¶43 For these reasons, *Comer* was a missed opportunity by the Utah Court of Appeals to revisit *Warden* and embrace the community caretaking exception to the Fourth Amendment. The analysis of the facts in *Comer* below demonstrates further that, under a proper community caretaking exception analysis, warrantless entry was justified because officers acted reasonably and in good faith—not because they had sufficient probable cause and exigent circumstances were present.

C. Warrantless Entry in Comer *was Proper Caretaking Act*

¶44 The Brigham City police officers who responded to the Comer residence and spoke with Misty Comer had an objectively reasonable basis for believing that a domestic dispute occurred in the home. [108] When officers asked Misty whether her husband was home, she "simply stated that her husband was home and then retreated inside."[109] The *Comer* court found that this "unexplained retreat," when coupled with an identified citizen tip, constituted probable cause to believe that a crime of domestic violence was

being or had been committed.[110] Officers observed no signs of injury on Misty yet followed her inside of the residence.[111] Once inside, the officers continued to follow Misty as she went down the hall, rather than keep her separated from her spouse,[112] even though "'a domestic violence complaint' is "one of the most potentially dangerous, volatile arrest situations confronting police.'"[113] The Comers did not even acknowledge that they had been involved in an argument until they and the officers moved into the front room of the house to discuss the situation.[114]

¶45 The facts indicate that the officers entered in order to keep the peace and protect both Misty and Damon until the officers could discover whether the domestic dispute and/or any crimes occurred at the scene. The officers' actions demonstrate that their intent in entering the house was not to make an arrest or to search for evidence. Initially, the officers treated neither Misty nor Damon as victim or suspect.[115] There is no indication that the officers acted in bad faith or conducted a search beyond the scope of the justification for entry.[116] Because the officers acted in good faith and in an objectively reasonable manner in making a warrantless entry to provide protection, the community caretaking exception justified their actions.

¶46 Rather than seize this opportunity, however, the *Comer* court briefly considered the more narrow emergency aid doctrine before ultimately relying upon a faulty exigent circumstances analysis to uphold the warrantless entry. While the facts in *Comer* could not satisfy the emergency aid doctrine, they did comport with the basic concept of community caretaking because the officers reasonably believed that the situation required immediate assistance to prevent injury.[117]

¶47 Despite refusing to expand community caretaking beyond the emergency aid context, the *Comer* court sought to justify the warrantless entry of the Comer residence, acknowledging the serious danger presented by domestic violence investigations.[118] To do so, the court analyzed the officers' actions under the exigent circumstances exception, but this analysis was improper because the officers did not enter the home with intent to make an arrest or to seize evidence.

¶48 Based on a citizen's tip and on Misty's "highly suspicious" response to a police inquiry regarding her husband's whereabouts, the court concluded that police had sufficient probable cause to believe that a domestic violence crime had occurred, yet the *Comer* opinion failed to identify which specific crime of domestic violence officers had probable cause to believe had taken place or who had committed such a crime. [119] Nothing in the conversation with Misty provided evidence of injury, property damage, or other loss, making suspect the court's claim that her actions "could reasonably have indicated to the officers that any number of scenarios might be about to occur, each of which would cause an officer to reasonably believe there was no time to get a warrant and/or that his presence was necessary to prevent physical harm to persons or the destruction of evidence."[120]

¶49 While entry was indeed made to prevent physical harm to persons during a reasonably perceived emergency, officers, at the time of entry, lacked probable cause to believe that anything more than an argument occurred. Of course probable cause to believe a crime has been or is being committed is not necessary when officers act reasonably in a caretaking capacity. Because the officers entered with intent to protect

rather than to search for suspects or evidence, the court should have upheld the entry as a legitimate *and* constitutionally reasonable performance of a caretaking function conducted in good faith. [121]

D. Exigent Circumstances Confusion in the wake of Comer

¶50 By failing to adopt the community caretaking exception in *Comer*, the Utah Court of Appeals eliminated the predictability of the exigent circumstances exception in the hopes of providing police with expanded powers to intervene in potentially deadly domestic violence disputes. Because *Comer* stretched the exigent circumstances exception beyond its logical limits, the court found itself forced to make conflicting conclusions and justifications, blurring the line between reasonable and unreasonable warrantless home entries.

¶51 Just fourteen weeks after *Comer*, the appellate court issued an irreconcilable decision in *Brigham City v. Stuart*.[122] There the court found no exigent circumstances existed when officers, standing outside of a residence but watching through a window, witnessed a struggle and assault involving several adults and a juvenile.[123] While in *Comer* a third-party tip and a woman's unexplained return inside of her home amounted to both probable cause and exigent circumstances, in *Stuart* the court unconvincingly declared that the trial court "made no findings from which we could reasonably conclude that the altercation posed an immediate serious threat or created a threat of escalating violence."[124]

¶52 The *Stuart* court distinguished *Comer*:

> The holding in *Comer* . . . should be narrowly construed, and only applies when the threat of continued domestic violence is present. The case at bar is distinguishable from *Comer,* for this is not a "domestic violence" situation. Additionally, the trial court found that the juvenile who seemed to be causing the commotion was restrained when the police arrived. Thus, *except for the fact that the juvenile's hand broke loose and "smacked one of the occupants of the residence in the nose," all violence had ceased by the time the officers arrived*. Also, unlike *Comer,* the police in the case at bar had a clear view of the interior of the home and could have intervened had further violence ensued.[125]

¶53 There are several problems with this analysis. First, the officers in *Stuart* would be hard pressed to determine, while standing outside of the residence, whether some or all of the individuals engaged in the altercation inside met the statutory definition of cohabitants for purposes of domestic violence laws. Second, it is extraordinary to claim that, but for the assault witnessed by officers at the scene, "all violence had ceased by the time the officers arrived." Finally, the *Stuart* court's finding of no exigency when officers could see a continuing physical altercation through a window is inconsistent with the *Comer* finding that officers could reasonably believe that a variety of scenarios *might* occur that would cause an officer to reasonably believe that his presence was necessary to prevent physical harm to persons and that there was no time to get a warrant.[126]

¶54 Hence, within just a few months, the Utah Court of Appeals found itself struggling to plug the holes *Comer* created in its probable cause/exigent circumstances analysis. Such confusing, inconsistent application of the exigent circumstances exception provides no guidance or predictability for peace officers charged with protecting and serving the public.

V. CONCLUSION

¶55 Justifiably not wanting to tie the hands of police officers responding to calls involving domestic violence, the Utah Court of Appeals upheld the warrantless entry in *Comer* under a liberal and illogical exigent circumstances analysis. Instead, the court should have followed the lead of other states and recognized an expanded view of the community caretaker doctrine. By failing to do so, the court produced a poorly reasoned finding of probable cause/exigent circumstances and generated increasing uncertainty as to when officers are justified in making a warrantless home entry in order to provide protection for others, a legitimate community caretaking duty expected of modern-day law enforcement officers. The better result would be to recognize that good faith warrantless searches, when appropriately limited in scope and conducted in order to provide protection or assistance to citizens in distress, do not offend Fourth Amendment guarantees. Rather, they are reasonable intrusions occurring in the performance of legitimate police community caretaking functions—functions that our society and our courts have come to expect law enforcement officers to perform.

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

[2] *See e.g.* Kylo v. United States, 533 U.S. 27, 31 (2001) ("With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no.").

[3] Katz v. United States, 389 U.S. 347, 357 (1967).

[4] Salt Lake City v. Davidson, 994 P.2d 1283, 1285-86 (Utah Ct. App. 2000) (citing Mincey v. Arizona, 437 U.S. 385, 390 (1978) and State v. Genovesi, 909 P.2d 916, 921 (Utah Ct. App. 1995)).

[5] State v. Beavers, 859 P.2d 9, 18 (Utah Ct. App. 1993) (quoting United States v. McConney, 728 F.2d 1195, 1199 (9th Cir.), *cert. denied*, 469 U.S. 824 (1984)).

[6] People v. Ray, 981 P.2d 928 (Cal. 1999), *cert. denied*, 528 U.S. 1187 (2000). The United States Supreme Court has expressly approved of the community caretaker exception, at least in the context of vehicle searches. *See* Cady v. Dombroski, 413 U.S. 433, 447 (1973).

[7] Ray, 981 P.2d at 936.

[8] *Id*. at 933 (quoting People v. Davis, 497 N.W.2d 910. 920 (Mich. 1993)); People v. Hebert, 46 P.3d 473, 479 (Colo. 2002). *But see* State v. Seavey, 789 A.2d 621, 625–29 (N.H. 2001) (Duggan, J., dissenting).

[9] *Id*. at 937.

[10] Davidson, 994 P.2d at 1287 ("We believe the emergency aid doctrine is sound and consistent with case law from both the United States Supreme Court and our own supreme court.").

[11] *Id*. at 1286 (citing Tracy A. Bateman, Annotation, *Lawfulness of Search of Person or Personal Effects under Medical Emergency Exception to Warrant Requirement*, 11 A.L.R. 5th 52, § 2[a] (1993)); People v. Amato, 562 P.2d 422, 424 (Colo. 1977).

[12] Ray, 981 P.2d at 933.

[13] Root v. Gauper, 438 F.2d 361, 364 (8th Cir. 1971).

[14] 51 P.3d 55, 63 (Utah Ct. App. 2002), *cert. denied*, 59 P.3d 603 (Utah 2002).

[15] Kirk v. Louisiana, 536 U.S. 635, 637 (2002) (quoting Louisiana Supreme Court Chief Justice Calogero). *See also* State v. Beavers, 859 P.2d 9, 13–14 (1993) (citing Payton v. New York, 445 U.S. 573, 587–89 (1980)).

[16] Illinois v. Gates, 462 U.S. 213, 238 (1983).

[17] Michigan v. DeFillippo, 443 U.S. 31, 37 (1979) (citations omitted).

[18] United States v. McConney, 728 F.2d 1195, 1199 (9th Cir.), *cert. denied*, 469 U.S. 824 (1984).

[19] *See* People v. Ray, 981 P.2d 928, 936–37 (Cal. 1999), *cert. denied*, 528 U.S. 1187 (2000).

[20] Some courts have limited application and analysis of community caretaking functions to police encounters involving seizures and have concluded that such caretaking encounters are consensual and therefore do not implicate the Fourth Amendment. *See* Perry v. Bordley, 379 F.Supp.2d 109, 112 n.6 (D.Mass. 2005) ("When police are called upon to perform community duties divorced from the investigation of crime or the gathering of evidence, a different set of rules applies. In the 'community caretaking' context, so long as police are acting reasonably, the Fourth Amendment does not apply at all."); *see also* People v. Cordero, 358 Ill.App.3d 121, 125 (Ill. App. Ct. 2005). However, community caretaking functions can, and often do, include nonconsensual seizures as well as searches. Clearly, such police intrusions must be reasonable under the Fourth Amendment. *See* United States v. Dunbar, 470 F.Supp. 704, 706 (D. Conn.), *aff'd*, 610 F.2d 807 (2nd Cir. 1979).

[21] Ray*,* 981 P.2d at 934 (quoting State v. Bridewell, 759 P.2d 1054, 1068 (Ore. 1988)). The State of Oregon has codified the authority of police to perform caretaking functions, defining them as "any lawful acts that are inherent in the duty of the peace officer to serve and protect the public." OR. REV. STAT. ANN. § 133.033 (West 2003).

[22] Ray*,* 981 P.2d at 934 (quoting State v. Bridewell, 759 P.2d 1054, 1068 (Ore. 1988)).

[23] *Id*. at 939. The *Ray* court recognized that caretaking duties required of police extend beyond simply assisting in medical emergencies:

> Although the case law attaches slightly greater weight to the protection of person from harm than to the protection of property from theft, many of the cases involving possible burglaries or breakings and enterings stress the dual community caretaking purpose of protecting both. Of necessity, officers may enter premises to resolve the situation and take further action if they discover a burglary has occurred or their assistance is otherwise required.

Id. at 934–35 (citations and quotations omitted); *see also* State v. Acrey, 64 P.3d 594, 600 (Wash. 2003) ("In this state, the community caretaking function exception to the warrant requirement encompasses not only the search and seizure of automobiles, but also situations involving either emergency aid or routine checks on health and safety.") (quotations and footnote omitted).

[24] State v. Nemeth, 23 P.3d 936, 944 (N.M. App. 2001).

[25] *See* Provo City v. Warden, 844 P.2d 360, 364–65 (Utah Ct. App. 1992).

[26] Cady v. Dombrowski, 413 U.S. 433 (1973). While state courts have more readily embraced the exception, the Fourth Circuit observed, "[a]t least one other federal court of

appeals has recognized that the 'community caretaker' doctrine can apply in limited circumstances to justify a warrantless entry in a home." Phillips v. Peddle, 2001 WL 262655 (4th Cir. 2001) (citing United States v. Rohrig, 98 F.3d 1506 (6th Cir.1996)). It is worth noting, however, that the United States Supreme Court denied petitions for certiorari in both *People v. Ray*, 981 P.2d 928 (1999), *cert. denied*, 528 U.S. 1187 (2000) and *People v. Davis*, 497 N.W.2d 910 (Mich. 1993), *cert. denied*, 508 U.S. 947 (1993).

[27] Ray, 981 P.2d at 936–37 (quoting State v. Alexander, 721 A.2d 275, 284–85 (Md. App. 1998)) (emphasis added).

[28] *See* People v. Davis, 497 N.W.2d 910, 920–21 (Mich. 1993).

[29] *See* State v. Nemeth, 23 P.3d 936, 944 (N.M. App. 2001); *see also* Ortega v. State, 974 S.W.2d 361, 364 (Tex. App. 1998).

[30] Ray, 981 P.2d at 936-37.

[31] This differs from the entirely objective determinations of whether probable cause and exigent circumstances existed. Whren v. United States, 517 U.S. 806, 813 (1996) ("Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.")

[32]Nemeth, 23 P.3d at 944.

[33] *Id*.

[34] *Id*. (quoting Davis, 497 N.W.2d at 921).

[35] *Id*. (quoting Ray, 981 P.2d 928, 937 (1999).

[36] *Id*. (quoting Sheik-Abdi v. McClellan, 37 F.3d 1240, 1245 (7th Cir. 1994)).

[37] 333 U.S. 10, 14-15 (1947) ("There are exceptional circumstances in which, on balancing the need for effective law enforcement against the right of privacy, it may be contended that a magistrate's warrant for search may be dispensed with. But this is not such a case.").

[38] *See* Mincey v. Arizona, 437 U.S. 385, 392 n.7 (1978).

[39] 318 F.2d 205, 210–14 (D.C. Cir. 1963).

[40] *See id*. at 209 ("[T]he discussion which follows reflects my own views."). Other courts have recognized an emergency aid exception as an outgrowth of exigent circumstances analysis. In *United States v. Dunavan*, 485 F.2d 201, 204–05 (6th Cir. 1973), the Sixth Circuit observed,

> We are aware that there may be cases where police assertions of Good Samaritan motives might (as charged here) be pretextual rather than real. On the other hand, particularly in big city life, the Good Samaritan of today is more likely to wear a blue coat than any other . . . [W]e agree with the holdings of the Eighth and Second Circuits . . . that a legitimate life-saving purpose may provide another example of the exigent circumstances which excuse failure to follow the warrant requirements of the Fourth Amendment.

[41] Wayne, 318 F.2d at 212.

[42] *Id*.

[43] *Id*.

[44] *Id*. at 213. Judge Burger states that, had the police officers sought a warrant rather than act immediately, their conduct "could surely merit censure" and notes "that police had a right—if not a duty—to assume" that an emergency was taking place. *Id*. Other courts have since agreed that peace officers are duty-bound to respond to perceived emergencies. *See, e.g*., United States v. Barone, 330 F.2d 543, 545 (2nd Cir. 1964). *See also infra* note 96.

[45] *See, e.g*., Salt Lake City v. Davidson, 2000 Utah App. 12 at ¶ 10.

[46] *See, e.g*., People v. Davis, 497 N.W.2d 910, 920–21 (Mich. 1993).

[47] People v. Ray, 981 P.2d 928, 933 (Cal. 1999).

[48] The high court has never used the phrase "emergency aid doctrine" in an opinion, but it is apparent that the court has approved the concept.

[49] Mincey, 437 U.S. at 392 (1978) (footnotes omitted).

[50] Barone, 330 F.2d at 545. The prohibited intent to "search" means searching primarily for reasons unrelated to locating and assisting those in need of emergency aid. In *Barone*, officers entered an apartment without a warrant after hearing loud screams at 1:50 A.M. The court approved of the officers' entry and inspection of the bathroom, where they observed in plain view pieces of counterfeit currency floating in the commode, because "investigation of the cause of the screaming would have been incomplete without finding out who might be in the bathroom and whether anyone there might be in need of aid." *Id*.

[51] Not all courts expressly factor in police motives when conducting an emergency aid analysis. For example, Washington courts apply a three-prong test that ignores officer intent. *See, e.g.,* State v. Menz, 880 P.2d 48, 49 (Wash. App. 1994). The Washington approach does, however, require a subjective belief by officers that an emergency exists. *Id*. at 49–50.

[52] 347 N.E.2d 607, 609 (N.Y. 1976). The *Mitchell* test has been adopted and applied by "several states, including Alaska, Arizona, Illinois, Nebraska, and North Dakota . . . and it is often cited with approval by legal commentators." State v. Jones, 947 P.2d 1030, 1037 (Kan. App. 1997).

[53] *See* State v. Acrey, 64 P.3d 594, 600 n.39 (Wash. 2003). Of course, this is not to say that emergency aid searches have no limits. *See* People v. Allison, 86 P.3d 421, 426–27 (Colo. 2004) ("An emergency search is strictly limited by the exigency that created the emergency and cannot support a general exploratory search." (citation omitted)).

[54] 844 P.2d 360 (Utah Ct. App. 1992), *aff'd*, 875 P.2d 557 (Utah 1994).

[55] *Id*. at 361.

[56] *Id*. at 363 n.1 (quoting Cady v. Dombrowski, 413 U.S. 433, 441 (1973)).

[57] *Id*. at 364 (citing State v. Lopez, 831 P.2d 1040, 1046 (Utah Ct. App. 1992)). The court fashioned its test based in part on Wisconsin's approach as set forth in *State v. Anderson*, 417 N.W.2d 411 (Wisc. Ct. App. 1987), *rev'd on other grounds*, 454 N.W.2d 763 (1990) and *State v. Anderson*, 439 N.W.2d 840 (Wisc. Ct. App. 1989). The Wisconsin test did not require imminent threat to life or limb, instead considering the exigency of the situation as one of four factors in determining whether the public interest in having police perform the caretaking function outweigh the degree of intrusion upon the individual's privacy interest.

[58] Warden, 844 P.2d at 364.

[59] *Id*. at 364–65.

[60] *Id*. at 365 (emphasis added).

[61] *Id*.

[62] Salt Lake City v. Davidson, 994 P.2d 1283, 1286 (Utah 2000).

[63] *See supra* Part II.C. In her concurring opinion in *State v. Yoder*, Judge Greenwood of the Utah Court of Appeals argued for adoption of the *Mitchell* test. 935 P.2d 534, 609 (Utah Ct. App. 1997) (Greenwood, J., concurring in result). In *Salt Lake City v. Davidson*, the court adopted Judge Greenwood's view and applied the *Mitchell* test. 994 P.2d 1283, 1286.

[64] Davidson, 994 P.2d at 1286 (citing State v. Yoder, 935 P.2d 534, 550 (Utah Ct. App. 1997) (Greenwood, J., concurring in result)).

[65] *Id*.

[66] *Id*.

[67] 51 P.3d 55 (Utah Ct. App. 2002).

[68] *See id*. at 64.

[69] The fact that the citizen informant was not anonymous is significant because Utah courts presume the reliability of tips when received from a citizen willing to identify himself. *See* Kaysville City v. Mulcahy, 943 P.2d 231, 234–35 (Utah App. 1997). This presumption of reliability is relevant when determining whether police have reasonable suspicion to detain a person for further investigation. *See id*.

[70] Comer, 51 P.3d at 59.

[71] *Id*.

[72] *Id*.

[73] *Id*. (internal quotation omitted).

[74] *Id*.

[75] *Id*.

[76] *Id*.

[77] *Id*. The opinion does not reveal the precise location where the drugs and paraphernalia were found.

[78] *Id*.

[79] Id. at 62.

[80] *Id*. at 59.

[81] *Id*.

[82] *Id*. The trial court approved of the officers' motives for making entry:

> There doesn't appear to be any evidence that in following her they said, oh, let's follow her in, maybe we can find drugs. There's no suggestion of that. There does seem to be a reasonable basis that the emergency is associated with the area they searched. In other words, all they did was follow her in and stay on track with her. *Id*.

[83] *Id*. at 63.

[84] *Id*. at 64 (internal citation omitted). The court fails to identify which crime of domestic violence probably occurred.

[85] *Id*. at 65 (internal citation and quotations omitted).

[86] United States v. Rohrig, 98 F.3d 1506, 1521 (6th Cir. 1996) (upholding warrantless home entry by police to turn down volume of loud music disturbing neighborhood).

[87] 844 P.2d 360 (Utah Ct. App. 1992), *aff'd*, 875 P.2d 557 (Utah 1994).

[88] *Id*. at 364; *see supra* Part III.A.

[89] Warden, 844 P.2d at 365.

[90] Florida v. Jimeno, 500 U.S. 248, 250 (1991).

[91] Ohio v. Robinette, 519 U.S. 33, 39 (1996).

[92] United States v. Sharpe, 470 U.S. 675, 682 (1985) (emphasis in original).

[93] 441 U.S. 520 (1979).

[94] *Id*. at 559 (citations omitted) (emphasis added).

[95] *Id*. at 558.

[96] *See, e.g*., State v. Lovegren, 51 P.3d 471, 474–75 (Mont. 2002) (noting "that the majority of the jurisdictions that have adopted the community caretaker doctrine have determined that a peace officer has a duty to investigate situations in which a citizen may be in peril or need some type of assistance from an officer" and citing cases from Minnesota, Alaska, New Jersey, Vermont, Washington, Arkansas, Illinois, North Dakota, Virginia, Wyoming, Alabama, and Wisconsin); Winters v. Adams, 254 F.3d 758, 764 (8th Cir. 2001) (noting that, had they failed to perform caretaking functions, the officers "would have been derelict in their duties" (quoting United States v. Rideau, 949 F.2d 718, 720 (5th Cir. 1991))).

[97] Provo City v. Warden, 844 P.2d 360, 364 (1992).

[98] *Id*.

[99] *Id*. at 365.

[100] Scott v. United States, 436 U.S. 128, 138 (1978) (footnote omitted).

[101] People v. Ray, 981 P.2d 928, 938 (Cal. 1999), *cert. denied*, 528 U.S. 1187 (2000) (citation omitted); *see also* State v. Nemeth, 23 P.3d 936, 944 (2001) ("The test of

legitimacy under the community caretaker doctrine is whether the officers' actions were objectively reasonable *and in good faith*." (emphasis added)). This is not necessarily suggesting that once a criminal investigation has commenced police are prohibited from performing caretaking functions. In *State v. Ryon*, 108 P.3d 1032 (N.M. 2005), the Supreme Court of New Mexico clarified this point: "We hold that in narrowly limited circumstances police may enter a home without a warrant or consent during a criminal investigation under the emergency assistance doctrine. To the extent that it may be read to preclude an emergency entry during a criminal investigation, we overrule *Nemeth*." Moreover, the second prong of the *Mitchell* test for determining whether the emergency aid doctrine applies, condemns police conduct only when it is *primarily* motivated by crime-fighting intentions. *See supra* Part II.C.

[102] *See supra* note 86 and accompanying text.

[103] *See* Warden, 844 P.2d at 364.

[104] Murray v. United States, 487 U.S. 533, 536 (1988) (citing Weeks v. United States, 232 U.S. 383 (1914)).

[105] *See* United States v. Leon, 486 U.S. 897, 916 (1984).

[106] *See id*. at 916–17.

[107] *See supra* Part II.A.

[108] State v. Comer, 51 P.3d 55, 59 (Utah Ct. App. 2002)

[109] *Id*.

[110] *Id*.

[111] *Id*. at 59.

[112] *Id*.

[113] *Id*. at 64-65 (quoting State v. Richards, 779 P.2d 689, 691 (Utah Ct. App. 1989)).

[114] *Id*. at 59.

[115] *See id*. at 59.

[116] *See supra* note 82.

[117] In fact, the *Comer* court found sufficient exigencies to support the warrantless entry. *See* Comer, 51 P.3d 55, 64-65. *Peacekeeping* is a proper caretaking function of *peace* officers. *See* United States v. York, 895 F.2d 1026 (5th Cir. 1990) (upholding police

entry into home for limited purpose of assisting guests of belligerent defendant in gathering their belongings and making a peaceful exit from defendant's home); People v. Beuschlein, 630 N.W.2d 921, 928 (Mich. Ct. App. 2001) (warrantless entry justified where police responding to call of a domestic disturbance can hear sounds of a scuffle coming from within the home).

[118] *See* Comer, 51 P.3d 55, 64.

[119] *Id*. at 64.

[120] *Id*. at 65. This finding of exigency, coupled with the probable cause determination, supposedly justified warrantless entry into the *Comer* residence. *See id*. at 65.

[121] *See supra* note 82.

[122] 57 P.3d 1111, *aff'd,* 2005 WL 387966.

[123] *Id*. Perhaps even more puzzling, the Utah Supreme Court affirmed *Stuart*. The court refused to establish a per se rule that domestic violence incidents equate to exigent circumstances, as *Comer* might be read to suggest, but gave a conclusory dismissal of the issue under the facts of *Stuart* by simply noting that "[t]here was no finding that any of the parties to the altercation in the Brigham City home were cohabitants." Brigham City v. Stuart, --- P.3d ----, 2005 WL 387966 at 12 (Utah, 2005). The high court went so far as to announce that persons within their homes "may even engage in acts that meet the legal definition of assault, thereby creating probable cause, but that nevertheless do not create an exigent circumstance authorizing a warrantless intrusion," *id*. at 8, suggesting that fights-in-progress occurring behind closed doors, particularly when those involved are not clearly cohabitants for purposes of domestic violence statutes, require officers to obtain a warrant before attempting to intervene. Such language may give officers reason to pause before attempting to assist victims of domestic violence, even when they reasonably perceive that prompt action is necessary to prevent physical harm. Moreover, such language seems inconsistent with the same court's decision to deny certiorari in *Comer*. Taken together, *Stuart* and *Comer* confuse rather than clarify the law governing warrantless home entries; ironically, both cases involved officers from the same agency, the Brigham City Police Department.

[124] Stuart, 57 P.3d 1111 at 1114. The court also relied on the fact that the officers did not immediately intervene or draw guns, suggesting a lack of exigency, *see id*., yet an apparently similar absence of force was wholly ignored in the *Comer* opinion.

[125] *Id*. at 114 n.2 (citation omitted) (emphasis added).

[126] Comer, 57 P.3d 55 at 65.