COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

FAR NO. _____
APPEALS COURT NO. 2024-P-0298

COMMONWEALTH

v.

JUSTIN PAGE

DEFENDANT'S APPLICATION FOR FURTHER APPELLATE REVIEW

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REQUEST FOR FURTHER APPELLATE REVIEW

The defendant, Justin Page, respectfully requests that the Supreme Judicial Court (SJC) grant further appellate review in his case. The defendant's appeal raises an important question about the continued vitality of the community caretaking exception to the warrant requirement. The defendant argued to the Appeals Court that the community caretaking exception no longer exists in the wake of the Supreme Court's decision in *Caniglia v. Strom*, 593 U.S. 194 (2021). In support of this argument, the defendant highlighted the questionable origin of the community caretaking exception and emphasized that the Supreme Court has never actually recognized this doctrine as a valid exception to the warrant requirement. The defendant further explained how the various opinions in *Caniglia* each reflected deep skepticism for the exception. The defendant alternatively asserted that, even if the exception does exist, its scope does not extend to justify a warrantless search of a person's backpack.

The Appeals Court disagreed with the defendant's argument and ruled that the community caretaking exception remains viable

in the aftermath of *Caniglia*.[1] The panel concluded that the exception remains valid until the Supreme Court says otherwise. The panel further ruled that the scope of the community caretaking exception extends to allow a warrantless search of a person's backpack. In reaching this conclusion, the panel did not cite a single case in which the exception has been extended this far.

The SJC should grant further appellate review to address the continued validity and, if necessary, the scope and applicability of the community caretaking exception. The Appeals Court was bound by the SJC's precedent applying the community caretaking exception and thus could not truly consider whether the exception survived the Supreme Court's decision in *Caniglia*. It is only the SJC that can properly address this important issue. The same is true with respect to the scope and applicability of the exception. These issues need to resolved or else there will continue to be considerable uncertainty about the exception. In its current state, the community caretaking exception is a muddled doctrine of

[1] A copy of the Appeals Court's published decision is appended to this application. The citation for the decision is *Commonwealth v. Page*, 105 Mass. App. Ct. 532 (2025).

questionable constitutional legitimacy with an unknown scope and no discernible standard for its application. The SJC should take this opportunity to clarify whether the exception remains viable in the wake of *Caniglia* and, if it does, to provide precise contours for its scope and applicability.

STATEMENT OF PRIOR PROCEEDINGS

On April 1, 2022, the Franklin County Superior Court issued indictments charging the defendant with (1) unlawful possession of a firearm, (2) unlawful possession of a loaded firearm, (3) possession of a firearm while committing a felony, (4) larceny of a firearm, and (5) possession of heroin with the intent to distribute. With respect to count one, the indictment charged the defendant with a sentencing enhancement pursuant to G. L. c. 269, s. 10G(a).

The defendant filed a motion to suppress the firearm and the drugs that formed the basis for the prosecution against him. The motion judge (Mason, J.) held an evidentiary hearing over the course of two days beginning on January 6, 2023, and ending on February 7, 2023. The judge took the matter under advisement at the close of the hearing. The judge issued a decision denying the defendant's motion to suppress on February 10, 2023.

The defendant tendered a conditional plea pursuant to Mass. R. Crim. Pro. 12(b)(6) on October 4, 2023. The terms of the plea were agreed to by both sides. The defendant agreed to plead guilty to the charge of (1) unlawful possession of a firearm and (5) possession of heroin with the intent to distribute. He also agreed to plead guilty to the sentencing enhancement on count one. In exchange for the defendant's plea, the Commonwealth agreed to dismiss the other charges and to allow the defendant to preserve his right to appeal the denial of his motion to suppress. The parties agreed on a sentence of three years in state prison on count one and two years of probation on count five. The court accepted the defendant's plea and sentenced the defendant in accordance with the agreement. The defendant filed a timely notice of appeal.

The Appeals Court docketed the defendant's appeal on March 19, 2024. The case was fully briefed and oral argument was held on February 5, 2025. The Appeals Court issued a published decision affirming the denial of the defendant's motion to suppress on May 13, 2025. The defendant is not seeking rehearing or modification in the Appeals Court.

STATEMENT OF FACTS

The facts relevant to the appeal are correctly stated in the Appeals Court's decision.

ISSUE ON WHICH FURTHER APPELLATE REVIEW IS SOUGHT

The defendant's appeal raises two issues involving the community caretaking exception to the warrant requirement:

1. Does the community caretaking exception continue to exist under the Fourth Amendment in the aftermath of the Supreme Court's decision in *Caniglia v. Strom*, 539 U.S. 194 (2021)?

2. If the exception remains viable, what is its scope and what is the legal standard for determining its applicability?

WHY FURTHER APPELLATE REVIEW IS APPROPRIATE

I. THE SUPREME COURT'S DECISION IN *CANIGLIA* RAISES CONSIDERABLE UNCERTAINTY ABOUT THE CONTINUED VITALITY OF THE COMMUNITY CARETAKING EXCEPTION.

The SJC should address the uncertainty surrounding the community caretaking exception to the warrant requirement. The continued vitality of the exception is uncertain in the wake of *Caniglia v. Strom*, 593 U.S. 193 (2021). The Supreme Court expressed deep skepticism for the exception in *Caniglia*. Numerous courts have recognized this skepticism and thus questioned

whether the exception truly exists.[2] In light of this uncertainty, the SJC should consider whether the exception remains viable. The Supreme Court has never adopted the exception and thus it remains an open question as to whether the exception is a constitutionally legitimate doctrine under the Fourth Amendment.

The exception has its roots in *Cady v. Dombrowski*, 413 U.S. 433 (1973). This case asked whether the police were constitutionally justified in searching the trunk of the defendant's vehicle. *Id.* at 442. Nowhere in the decision did the Court adopt a community caretaking exception to the warrant requirement.

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[2] *See Clemons v. Couch*, 3 F.4th 897, 904 (6th Cir. 2021) ("We now know, based on *Caniglia*, that the community-caretaker exception, to the extent it exists at all, does not apply to the home."); *Dahl v. Kilgore*, 2021 WL 3929226 at *5 (6th Cir. Sep. 2, 2021) ("[T]he Supreme Court's recent decision in [*Caniglia*] casts doubt as to whether the community caretaker exception exists outside the vehicular context, if at all."); *United States v. Wertenberger*, 2021 WL 3877686 (W.D. Mo. Aug. 10, 2021) ("Although the *Caniglia* holding was expressly limited to warrantless searches of a home, a fair reading of the opinion calls into question whether community caretaking is a standalone exception to the Fourth Amendment warrant requirement in those circumstances beyond the search of a home."); Ric Simmons, *Lange, Caniglia, and the Myth of Home Exceptionalism*, 54 Ariz. St. L. J. 145, 172 (2022) ("The second interpretation of *Caniglia* has little to do with home exceptionalism. Under this view, the Court abolished the community caretaking altogether—or, more accurately, claimed that such an exception never existed.").

However, one sentence in the opinion gave birth to the exception. That sentence reads as follows:

> 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, 413 U.S. at 441.

This sentence was dicta and nothing about it suggested that the Supreme Court intended to create a new community caretaking exception. Yet courts from across the country latched onto this language and used it to justify the creation of such an exception.[3] The SJC and the Appeals Court followed this wave of momentum.[4]

While the community caretaking exception expanded amongst the lower courts, the Supreme Court said little about this exception

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[3] *See, e.g., United States v. Coccia*, 446 F.3d 233, 238 (1st Cir. 2006); *Ray v. Township of Warren*, 626 F.3d 170, 174-175 (3rd Cir. 2010); *State v. Tully*, 348 A.2d 603, 609 (Conn. 1974). *See also* Gregory Helding, *Stop Hammering Fourth Amendment Rights: Reshaping The Community Caretaking Exception With The Physical Intrusion Standard*, 97 Marq. L. Rev. 123, 149 (2013) ("[C]ourts have fallen like dominoes as the expansion of community caretaking has spread through American jurisprudence.").

[4] *See, e.g., Commonwealth v. Murdough*, 428 Mass. 760, 762-764 (1999); *Commonwealth v. McDevitt*, 57 Mass. App. Ct. 733, 736 (2003).

that it seemingly gave unintentional birth to in *Cady*. The Supreme Court used the term "community caretaking" in only one case in the four decades following its 1973 decision in *Cady*.[5] The Supreme Court ended its silence in *Caniglia v. Strom*, 593 U.S. 194 (2021). In *Caniglia*, the Court considered whether the exception can justify a warrantless search of a home. 593 U.S. at 196. The Court concluded that it cannot. *Id.* In reaching this conclusion, the Court stated that "[t]he First Circuit's 'community caretaking' rule . . . goes beyond anything this Court has recognized." *Id.* at 198. The Court framed its holding narrowly: The community caretaking exception cannot justify a warrantless entry into a home. *Id.* at 199. However, in doing so, the Court raised serious doubts about the existence of a community caretaking exception under the Fourth Amendment.

The majority opinion is laden with skepticism for the exception. Consider the following passage discussing the First Circuit's decision:

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[5] *See South Dakota v. Opperman*, 428 U.S. 364, 368 (1976) (referring to "community caretaking functions" of police).

> Citing this Court's statement in *Cady* that police officers often have noncriminal reasons to interact with motorists on public highways, the First Circuit extrapolated a freestanding community-caretaking exception that applies to both cars and homes.

Caniglia, 593 U.S. at 197.

If *Cady* in fact created a community caretaking exception, then the Court would have acknowledged as much. Instead, the Court stated that the First Circuit was responsible for creating this exception. This is not a semantical difference. By casting the community caretaking exception as a creation of the First Circuit, the majority opinion highlighted the fact that the Supreme Court has never endorsed the existence of such an exception. Without changing the result of the case, the Court could have explicitly adopted the exception yet limited its application to warrantless searches of vehicles. The Court instead declined to acknowledge the exception's existence whatsoever.

The concurring opinions raise further doubt about the exception. Justice Alito did not mince words; he explicitly stated that the exception does not exist:

> [T]here is no special Fourth Amendment rule for a broad category of cases involving "community caretaking."

> . . . .
>
> The Court's decision in *Cady v. Dombrowski*, 413 U.S. 433 (1973), did not recognize any such "freestanding" Fourth Amendment category. The opinion merely used the phrase "community caretaking" in passing.

Caniglia, 593 U.S. at 200 (Alito, J., concurring).

Unlike Justice Alito's concurrence, the other two concurring opinions did not explicitly reject the exception. Chief Justice Roberts emphasized the utility of the emergency aid exception. *Caniglia*, 593 U.S. at 199-200 (Roberts, C.J., concurring). Without saying as much, the Chief Justice's point was clear: This case should have been argued and analyzed under the emergency aid exception, which the Court formulated in *Brigham City v. Stuart*, 547 U.S. 398 (2006), and not under the community caretaking exception, which the Court has never recognized. Justice Kavanaugh's concurrence stressed the same point. *Caniglia*, 593 U.S. at 204-208 (Kavanaugh, J., concurring). With respect to the community caretaking exception, he reemphasized that this exception is a creation of the lower courts. *Id.* at 205. Though each opinion in *Caniglia* is worded differently, they all deliver the same

message: There is no separate community caretaking exception that is distinct from the emergency aid exception.

Given the skepticism expressed in *Caniglia*, there is uncertainty about the continued vitality of the community caretaking exception. The SJC should do what the Appeals Court could not and address this uncertainty. In doing so, the Court should provide a definitive answer as to whether there is a community caretaking exception that operates distinctly from the emergency aid exception.

II. THERE IS A LACK OF CLARITY REGARDING THE SCOPE AND THE TEST FOR DETERMINING THE APPLICABILITY OF THE COMMUNITY CARETAKING EXCEPTION.

If the community caretaking exception remains viable, the SJC should address its scope and applicability. The community caretaking exception is a muddled doctrine with an undetermined scope and no established standard for its application. With respect to its scope, *Caniglia* established that the exception cannot justify a warrantless entry into a home. 593 U.S. at 196. Obviously, there are many warrantless searches and seizures that do not reach this level of constitutional intrusion. The warrantless search of the defendant's backpack is a prime example. The question remains as

to whether the exception can justify such a search. The Appeals Court concluded that the exception can reach this far because the SJC has never limited the scope of the doctrine.[6] However, the SJC has been careful in its expansion of the exception. The farthest the SJC has gone in applying the exception is to justify the brief detention of an individual.[7] Thus, while the SJC has never held that the exception cannot justify a warrantless search of a person's backpack, the Court has also never said that it can justify such a search. The scope of the exception will remain undefined until the SJC addresses this issue.

Moving past the issue of scope, the standard for applying the community caretaking exception may be the greatest source of uncertainty. The courts that have adopted the exception employ a

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[6] The Appeals Court has consistently expanded the scope of the exception without limitation. *See Commonwealth v. Cantelli*, 83 Mass. App. Ct. 156, 164-165 (2013) (relying on exception to justify warrantless entry into home). This expansion of the exception ran into a roadblock when the Supreme Court decided *Caniglia*. Despite the decision in *Caniglia*, the Appeals Court has not shown any hesitation to continue to expand the exception into uncharted territory. *See Commonwealth v. Demos D.*, 105 Mass. App. Ct. 193, 200-201 (2025) (exception justified patfrisk of juvenile).

[7] *See Commonwealth v. Armstrong*, 492 Mass. 341, 349-350 (2023) (exception justified twenty-minute detention of individual exhibiting odd behavior).

patchwork of different standards to determine its applicability.[8] The standard in Massachusetts is similarly inconsistent. The cases emphasize that the exception is applicable when police action is "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Armstrong*, 492 Mass. at 349, quoting *Cady*, 413 U.S. at 441. Yet there is no consensus as to how to apply this standard. Sometimes the focus is

[8] *See Hawkins v. United States*, 113 A.3d 216, 221 (D.C. 2015) (discussing different tests that courts have adopted for applying community caretaking exception); Michael R. Dimino, Sr., *Police Paternalism: Community Caretaking, Assistance Searches, and Fourth Amendment Reasonableness*, 66 Wash. & Lee L. Rev. 1485, 1494 (2009) ("The vagueness surrounding the definition of the community-caretaking category and the different standards governing the constitutionality of different types of community-caretaking searches indicate that more precision is needed. There is not a single community-caretaking doctrine. Rather, there are several different community-caretaking doctrines, but courts have not clarified the constitutional interests affected by those different kinds of searches."); Transcript of Oral Argument at 59, *Caniglia v. Strom*, 593 U.S. 194 (2021) (Sotomayor, J.) ("[I]'ve read the decisions of other circuits. They seem all to have different factors that make up community caretaking and I'm actually not sure what it means.").

on the motivation underlying the police action.[9] Other times the motivation of the police is irrelevant and the focus is on whether there was an objective basis for believing that the defendant's safety was in jeopardy.[10] The standard for applying the exception needs to sorted out. The oft-quoted dicta from *Cady* cannot be the test. The Supreme Court never intended to create a community caretaking exception in *Cady* and, if it had, it would have defined the standard for applying the exception with greater precision. If the community caretaking exception remains viable, the SJC should create a coherent test for determining its applicability. At a minimum, the Court should clarify whether the applicability of the exception depends on the subjective intent of the involved officers or not.

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[9] *See Commonwealth v. Knowles*, 451 Mass. 91, 95-96 (2008) (stating that Commonwealth has burden to prove non-investigatory purpose); *Commonwealth v. Lubiejewski*, 49 Mass. App. Ct. 212, 216 (2000) (exception did not apply to stop of motor vehicle because officer was motivated by investigatory purpose). *See also Commonwealth v. Entwhistle*, 463 Mass. 205, 219 n.8 (2012) (recognizing that "subjective noninvestigative intent is relevant to the community caretaking exception" under federal law).

[10] *See Commonwealth v. Fisher*, 86 Mass. App. Ct. 48, 51-52 (2014) (subjective intent of officer deemed irrelevant to analysis); *Commonwealth v. McDevitt*, 57 Mass. App. Ct. 733, 736 (2003) (same).

CONCLUSION

For the reasons set forth above, the Court should allow the defendant's application for further appellate review.

Respectfully Submitted,
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Dated: 5/23/25

ADDENDUM TABLE OF CONTENTS

COMMONWEALTH vs. JUSTIN PAGE.

No. 24-P-298.

Franklin. February 5, 2025. – May 13, 2025.

Present: Blake, C.J., Meade, & Englander, JJ.

Motor Vehicle, Firearms. Firearms. Evidence, Firearm. Narcotic Drugs. Controlled Substances. Search and Seizure, Motor vehicle. Practice, Criminal, Appeal, Motion to suppress, Plea. Rules of Criminal Procedure.

Indictments found and returned in the Superior Court Department on April 1, 2022.

A pretrial motion to suppress evidence was heard by Mark D. Mason, J., and conditional pleas of guilty were accepted by Karen Goodwin, J.

Edward Crane for the defendant.
Bethany C. Lynch, Assistant District Attorney, for the Commonwealth.

MEADE, J. Following his indictments on several firearm and drug-related charges, the defendant moved to suppress, in relevant part, items seized by the Greenfield police from a backpack located in his car, claiming that the warrantless

search of the backpack violated art. 14 of the Massachusetts Declaration of Rights and the Fourth Amendment to the United States Constitution. After an evidentiary hearing, the defendant's motion to suppress was denied on the basis that the warrantless search of the backpack was constitutional pursuant to the community caretaking exception.

Thereafter, the defendant entered into a conditional plea agreement, pursuant to Mass. R. Crim. P. 12 (b) (6), as appearing in 482 Mass. 1501 (2019), pleading guilty to count one, unlawful possession of a firearm as a prior offender, and count five, possession of a class A controlled substance (heroin) with intent to distribute, while reserving the right to appeal from the denial of his motion to suppress. We affirm the denial of the motion to suppress.

Background. "We recite the facts as found by the motion judge . . . ." Commonwealth v. Goncalves-Mendez, 484 Mass. 80, 81 (2020). Greenfield Police Department Deputy Chief William Gordon (Deputy Chief Gordon) has been a member of the Greenfield Police Department since 1993. His duties are largely administrative, and he last performed field work in 2008. On September 24, 2021, at approximately 5:30 P.M., Deputy Chief Gordon was at a Big Y Supermarket parking lot with his wife, Greenfield Police Department Officer Laura Gordon (Officer Gordon). Officer Gordon has been with the Greenfield Police

Department for approximately thirty years. Both Deputy Chief Gordon and Officer Gordon were off duty, going grocery shopping, and in plain clothes. They were traveling in an unmarked Greenfield police car equipped with a police radio. While pulling into the Big Y Supermarket parking lot, they heard a police broadcast that there was a person "down or semi-conscious" in a car in that parking lot, near the New Fortune Restaurant. There they saw a group of people standing next to the driver's side door of a car and drove up to the gathering. Inside, a person, later identified as the defendant, appeared to be passed out and slumped behind the steering wheel. The defendant was alone in the car.

Deputy Chief Gordon notified the police department dispatch that they were at the scene with the person. Officer Gordon got out of their car and approached the defendant's car; the defendant was pale white as if he was not breathing. Officer Gordon told Deputy Chief Gordon she believed the defendant was overdosing. Deputy Chief Gordon radioed to dispatch that the defendant was "nodding" and having difficulty breathing. Officer Gordon opened the driver's side car door, and Deputy Chief Gordon saw that the defendant appeared to be struggling with Officer Gordon.

Deputy Chief Gordon got out of his car to assist. A small group of people remained at the scene. Officer Brent Griffin

(Officer Griffin) arrived in uniform, and Deputy Chief Gordon stepped aside to permit Officer Griffin to assist.[1] The officers told the defendant that they were there to help him. The defendant was reaching for the steering wheel and Deputy Chief Gordon thought he might attempt to drive away. At the same time, the defendant was reaching for a backpack next to him. The officers repeatedly told the defendant to stop reaching for the backpack. The defendant ignored their orders, pulled away from Officers Gordon and Griffin, and continued to reach for the backpack and the car's controls.

Because the defendant was reaching for the steering wheel and the backpack, Deputy Chief Gordon believed there was a safety issue, and he attempted to open the front passenger's side door, but it was locked. The crowd in the parking lot was growing in number, and Deputy Chief Gordon's car had its blue lights activated. Officer Gordon unlocked the passenger's side door, and Deputy Chief Gordon retrieved the backpack from the car. At that point, he was not aware of any criminal wrongdoing and continued to believe the defendant was overdosing. Deputy Chief Gordon retrieved the backpack because medics had arrived

[1] The Greenfield Police Department's policy on off-duty officers provides that an off-duty officer who observes a crime being committed or a medical emergency should attempt to intervene. Once an on-duty officer arrives on scene, the off-duty officer is expected to yield to the on-duty officer.

on scene and he assumed it would travel with the defendant to the hospital.[2]

Deputy Chief Gordon opened the backpack for two purposes: first, to determine if it contained a weapon to ensure the safety of the public, the police, and the defendant; and second, to determine if it contained the defendant's identification. Inside the backpack, Deputy Chief Gordon found several small bags containing hard objects that he believed to be packets of heroin. At the bottom of the backpack, he found a knife, a pistol, and a large amount of cash. Once he discovered the weapons, Deputy Chief Gordon assumed the defendant had been reaching for the backpack to get a weapon. Accordingly, he instructed Officer Griffin to get the defendant out of the car and handcuff him.

Two additional officers arrived on scene, and they transported the defendant to the Greenfield Police Department for booking. At the police station, the defendant was twice provided his Miranda rights.[3] Thereafter, he admitted to

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[2] When the incident call first came in, the Greenfield Fire Department was called for medical assistance. Officer Griffin eventually determined there was no medical emergency and the Greenfield Fire Department medical team left. The medics did not ask the police to look for any information relating to the defendant.

[3] See Miranda v. Arizona, 384 U.S. 436, 471-473 (1966).

possession of the narcotics and to having taken the firearm from his mother.[4]

Discussion. 1. The conditional plea agreement. The defendant claims, for the first time on appeal, that we "should follow the bread crumbs laid out by the [United States] Supreme Court [in Caniglia v. Strom, 593 U.S. 194 (2021),] and rule that, under the Fourth Amendment, there is no community caretaking exception [for warrantless searches] that operates distinctly from the emergency aid exception." As a threshold matter, the Commonwealth contends that the defendant's constitutional challenge to the community caretaking exception exceeds the scope of the appellate claim that the defendant reserved in the conditional plea agreement, which had been executed pursuant to Mass. R. Crim. P. 12 (b) (6). Because of that, the Commonwealth claims that the argument is waived.[5] In the circumstances of this case, we disagree.

[4] Although the defendant moved to suppress these statements, the motion judge did not address them, and the defendant does not challenge them on appeal.

[5] In general, "a plea of guilty by its terms waives all nonjurisdictional defects." Commonwealth v. Cabrera, 449 Mass. 825, 830-831 (2007), citing Garvin v. Commonwealth, 351 Mass. 661, 663-664, appeal dismissed, cert. denied, 389 U.S. 13 (1967). See United States v. Broce, 488 U.S. 563, 569 (1989) ("A plea of guilty and the ensuing conviction comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilt and a lawful sentence").

The Supreme Judicial Court first allowed the use of conditional plea agreements in Commonwealth v. Gomez, 480 Mass. 240, 240-241, 252 (2018), which prompted the addition of rule 12 (b) (6) to the Massachusetts Rules of Criminal Procedure in 2019, see Gomez, supra at 252. In relevant part, rule 12 (b) (6) states,

> "With the written agreement of the prosecutor, the defendant may tender a plea of guilty . . . while reserving the right to appeal any ruling or rulings that would, if reversed, render the Commonwealth's case not viable on one or more charges. The written agreement must specify the ruling or rulings that may be appealed, and must state that reversal of the ruling or rulings would render the Commonwealth's case not viable on one or more specified charges."

Mass. R. Crim. P. 12 (b) (6). In this case, the defendant's written conditional plea agreement reserved the following issue: "Defendant's Motion to Suppress held on February 7, 2023[,] and denied by [the motion judge] on February 10, 2023. Related to all charges on the indictment."

At issue in this appeal is, after reserving the right to appeal from an order denying a motion to suppress, what arguments may the defendant raise on appeal regarding that ruling. The Commonwealth contends that the defendant's reservation of the right to appeal from the denial of his motion to suppress is implicitly limited to the assertion of arguments

raised in the motion, which in this case did not include a constitutional challenge to the community caretaking exception.[6]

In light of the recency of the addition of rule 12 (b) (6), the Commonwealth supports its position with cases applying Fed. R. Crim. P. 11(a)(2), the Federal analogue to rule 12 (b) (6).[7] We may look to such cases for guidance.[8] See, e.g., Commonwealth v. Lampron, 441 Mass. 265, 269 (2004) ("it is appropriate to look to the Federal analogue of [Mass. R. Crim. P. 17 (a) (2), 378 Mass. 885 (1979)], on which our rule was modeled, for interpretive guidance").

As a general principle, the Commonwealth is correct: when a defendant reserves the right to appeal from a pretrial ruling in a conditional plea agreement, the scope of reserved arguments on appeal will ordinarily be limited to those raised below in

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[6] The defendant concedes in his reply brief that he did not make this argument in his motion to suppress.

[7] In relevant part, Fed. R. Crim. P. 11(a)(2) states, "With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion."

[8] While the Reporter's Notes to rule 12 (b) (6) do not state that Federal rule 11(a)(2) served as its model, the relevant text of each rule is substantively identical: both require that the conditional plea agreement specify the pretrial ruling or rulings being reserved for appeal, and neither provides further detail regarding the scope of appellate arguments that may be raised. See Mass. R. Crim. P. 12 (b) (6); Fed. R. Crim. P. 11(a)(2).

the applicable motion and motion hearing. See United States v. Doherty, 17 F.3d 1056, 1058 (7th Cir. 1994) ("[The defendant]'s 'conditional' plea . . . reserved the right to appeal only the denial of his motion to dismiss the indictment on the ground the motion had stated . . ."). See also United States v. Anderson, 374 F.3d 955, 958 (10th Cir. 2004) (adopting rule set forth in Doherty, supra).

However, where, as here, the motion judge's order relied on a legal doctrine that was not raised by the parties in connection with the motion to suppress, the scope of reserved arguments on appeal may include legal challenges to that doctrine and its application to the facts. See Anderson, 374 F.3d at 958 (improper pat-down argument waived because "[n]either the order nor [the defendant]'s motion to suppress evidence raised the improper-patdown argument" [emphasis added]); United States v. Ramos, 961 F.2d 1003, 1006 (1st Cir.), cert. denied, 506 U.S. 934 (1992), overruled en banc on other grounds by United States v. Caron, 77 F.3d 1 (1st Cir. 1996) (entrapment by estoppel argument waived because "[n]either th[e] motions nor the district court's Rulings and Memorandum of Decision nor the written plea agreement itself say anything about entrapment by estoppel" [emphasis added]).

We conclude, in the peculiar posture of this case, that the defendant's constitutional challenge to the community caretaking

exception falls within the scope of the conditional plea agreement. Although this challenge was not made in the motion to suppress, it was the basis of the judge's ruling. As such, it comports with the policy objective underpinning the requirement that conditional plea agreements specify the ruling or rulings that may be appealed: to "prevent entry of a conditional plea 'without the considered acquiescence of the government.'" United States v. Yasak, 884 F.2d 996, 999 (7th Cir. 1989), quoting Advisory Committee Notes to Fed. R. Crim. P. 11 (1983). See United States v. Carrasco, 786 F.2d 1452, 1454 n.3 (9th Cir. 1986), overruled en banc on other grounds by United States v. Jacobo Castillo, 496 F.3d 947 (9th Cir. 2007) ("Rule 11[a][2] represents . . . an insistence on unequivocal government acquiescence"). At the time the Commonwealth consented to the conditional plea agreement, it had notice of the motion judge's legal bases for the reserved ruling, including the invocation of a legal doctrine not raised by the parties.

A further supporting justification that makes it permissible for us to address the defendant's claim in this posture is that it presents a pure question of law. The constitutional challenge here does not require the resolution of any issues of fact that we would have otherwise treated as waived if they had not been raised at the motion to suppress

hearing. See Commonwealth v. Jones-Pannell, 472 Mass. 429, 438 (2015) (improper for appellate court to engage in independent fact finding); Commonwealth v. Lugo, 104 Mass. App. Ct. 309, 314 (2024) ("[o]ur appellate office does not equip us" to find facts or weigh evidence).

2. The community caretaking exception. The community caretaking exception to the warrant requirement finds its roots in Cady v. Dombrowski, 413 U.S. 433, 441 (1973). There, the United States Supreme Court "held that a warrantless search of an impounded vehicle for an unsecured firearm did not violate the Fourth Amendment." Caniglia, 593 U.S. at 196, citing Cady, supra. The Court remarked that "police officers who patrol the 'public highways' are often called to discharge noncriminal 'community caretaking functions.'" Caniglia, supra, quoting Cady, supra.

> "The community caretaking doctrine is applicable principally to a range of police activities involving motor vehicles, in which there are objective facts indicating that a person may be in need of medical assistance or some other circumstance exists apart from the investigation of criminal activity that supports police intervention to protect an individual or the public" (citations omitted).

Commonwealth v. Fisher, 86 Mass. App. Ct. 48, 51 (2014).

We turn to the merits of the defendant's argument.[9] The defendant claims that the community caretaking exception no

[9] Because the motion judge based his ruling on the community caretaking exception, and we disagree with the defendant's

longer exists under the Fourth Amendment in the aftermath of the Supreme Court's decision in Caniglia, 593 U.S. at 199. However, the defendant's attempted reassembly of the Caniglia breadcrumbs fails to create the constitutional loaf he envisioned the Court baking. Indeed, the Court framed its holding narrowly and established merely that the community caretaking exception does not extend to searches of a person's home. Id. at 196-199. Contrary to the defendant's suggestion, the Court did not eliminate in whole the community caretaking exception to the Fourth Amendment's warrant requirement, as it still applies to motor vehicles. See Commonwealth v. Regan, 104 Mass. App. Ct. 623, 624-626 (2024).

Alternatively, the defendant claims that Caniglia suggests that the community caretaking exception, if it exists at all, should be applied to a narrow set of circumstances. Specifically, the defendant contends that Cady only explicitly applies to inventory searches of impounded vehicles and gives no indication that the police may conduct a warrantless search of anything within a vehicle whenever they believe that the safety of the public is in jeopardy. Therefore, the defendant's argument follows, the community caretaking exception does not

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arguments regarding that exception, we do not address the applicability of the emergency aid exception as an alternative justification for Deputy Chief Gordon's warrantless search.

extend, as a matter of law, to the warrantless search of a person's backpack. We disagree.

The Supreme Judicial Court has not interpreted the scope of the exception to be so limited:

> "In carrying out [the community caretaking] function, an officer may, when the need arises, stop individuals and inquire about their well-being, even if there are no grounds to suspect that criminal activity is afoot. An officer may take steps that are reasonable and consistent with the purpose of his inquiry, even if those steps include actions that might otherwise be constitutionally intrusive" (emphasis added; citations omitted).

Commonwealth v. Knowles, 451 Mass. 91, 94-95 (2008). See Commonwealth v. Demos D., 105 Mass. App. Ct. 193, 196 (2025).

Here, the off-duty police officers responded to the unresponsive defendant in a car surrounded by a growing number of bystanders in a public parking lot. The defendant was nodding, and appeared pale white, as if he was not breathing. The officers believed the defendant was overdosing. When his car door was opened, the defendant regained some level of consciousness, struggled with the officers, became combative, and grabbed for the steering wheel in what might have been an attempt to drive away. At the same time, despite being repeatedly told not to, the defendant reached for the backpack next to him.

Based on what was occurring, Deputy Chief Gordon took and opened the backpack to determine if it contained a weapon to

ensure the safety of the nearby public and the police, and to determine if it held the defendant's identification. As the motion judge found, Deputy Chief Gordon's actions in opening and searching the backpack were necessary to address the ongoing medical and safety concerns. Indeed, an officer may take reasonable steps consistent with the purpose of his inquiry even if those steps may be constitutionally intrusive, e.g., searching for a weapon. See Knowles, 451 Mass. at 95. In any event, "[s]o long as the officer's conduct at the outset and throughout the course of exercising a community caretaking function is justified by the doctrine, the law does not attach significance to the officer's subjective motives." Fisher, 86 Mass. App. Ct. at 51. At the same time, while an officer performs a community caretaking function, he need not ignore contraband discovered in the process. See Commonwealth v. Swartz, 454 Mass. 330, 335 (2009); Commonwealth v. Murdough, 428 Mass. 760, 764-765 (1999).

Here, the Commonwealth met its burden of "demonstrating, by objective evidence, that the officer's actions were 'divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.'" Knowles, 451 Mass. at 95, quoting Cady, 413 U.S. at 441. The motion to suppress was properly denied.

Order denying motion to suppress affirmed.

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, ss.

SUPERIOR COURT
CRIMINAL ACTION
No. 2278CR00051

COMMONWEALTH

vs.

JUSTIN PAGE

DECISION AND ORDER ON DEFENDANT'S MOTION TO SUPPRESS

The defendant, Justin Page ("Mr. Page"), was indicted on charges of unlawful possession of a firearm, unlawful possession of a loaded firearm, use of a firearm in a felony, larceny of a firearm, and possession of a controlled substance with intent to distribute (Class A- heroin). Mr. Page now seeks to suppress items seized resulting from the search his motor vehicle, the backpack in his motor vehicle, and his subsequent statements made to the police.[1] For the reasons set forth below, Mr. Page's motion is to be *denied.*

A. Findings of Fact

Based upon the preponderance of the credible evidence adduced at hearing, I find as follows:

Greenfield Police Department Deputy Chief Wm. Gordon ("Deputy Chief Gordon") has been a member of the Greenfield Police Department since 1993. His duties are largely administrative, and he last performed field work in 2008. On September 24, 2021, at approximately 5:30 PM, Deputy Chief Gordon was at the Big Y Supermarket parking lot with

[1] At hearing, the defendant limited the suppression of his statements to the extent they constitute "fruit of the poisonous tree." See *Wong Sun* v. *United States,* 371 U.S. 471 (1963). He does not seek suppression of his statements pursuant to any theory set forth in *Miranda* v. *Arizona,* 384 U.S. 436 (1966).

his wife, Greenfield Police Department Officer Laura Gordon ("Officer Gordon"). Officer Gordon has been with Greenfield Police Department for approximately 30 years. Both Deputy Chief Gordon and Officer Gordon were off-duty, going grocery shopping, and in plain clothes. They were travelling in an unmarked Greenfield Police car with a police radio. While pulling into Big Y Supermarket parking lot, they heard over their police radio that there was a person down or semi-conscious in a car in the parking lot near the New Fortune Restaurant. They observed a group of people standing next to the driver's door of a motor vehicle. They drove up to the vehicle. Inside, an individual, later identified as defendant, appeared to be passed out and slumped behind the steering wheel. Defendant was alone in the motor vehicle.

Deputy Chief Gordon radioed that they had the person.[2] Officer Gordon exited her motor vehicle, approached the defendant's motor vehicle, and observed the defendant to be pale white as if he wasn't breathing. Officer Gordon told Deputy Chief Gordon she believed the defendant was overdosing. Deputy Chief Gordon radioed to dispatch that the defendant was "nodding" and having difficulty breathing. Officer Gordon opened the door to the motor vehicle and Deputy Chief Gordon observed that defendant appeared to be struggling with Officer Gordon. Officer Gordon went to the passenger side.

Deputy Chief Gordon exited his motor vehicle to assist. A small group of people remained at the scene. Officer Griffin arrived in uniform, and Deputy Chief Gordon stepped aside to permit Officer Griffin to assist. The officers told defendant that they were there to help him. Deputy Chief Gordon observed the defendant reaching for the steering wheel and thought he might attempt to drive away. At the same time, defendant was reaching for a backpack next to him. The officers repeatedly told defendant to stop reaching for the backpack. He ignored their

[2] The Greenfield Police Department's policy on off-duty officer self-activation provides that an off-duty officer who observes a crime being committed or a medical emergency should attempt to intervene. Once an on-duty officer arrives on scene, that officer is expected to yield to the on-duty officer.

orders, pulled away from Officer Gordon and Officer Griffin, and continued to reach for the backpack and the motor vehicle controls.

Because defendant was reaching for the steering wheel and the backpack, Deputy Chief Gordon believed there was a safety issue, and he attempted to open the passenger door, but it was locked. The crowd in the lot was growing and Deputy Chief Gordon had activated the blue lights in his vehicle. Officer Gordon was able to unlock the passenger door, and Deputy Chief Gordon took the backpack out of the motor vehicle. At that point, he was not aware of any criminal wrongdoing and continued to believe defendant was overdosing. Deputy Chief Gordon seized the backpack because medics had arrived on scene, and he assumed it would travel with the defendant to the hospital.

Deputy Chief Gordon opened the backpack for two purposes: first, to determine if it contained a weapon to ensure the safety of the public, the police, and the defendant; and second, to determine if it contained defendant's identification. Inside the backpack, Deputy Chief Gordon found several small bags containing hard objects which he observed to be packets of heroin. At the bottom of the backpack, he found a knife, a pistol, and a large amount of cash. Once he discovered the weapons, Deputy Chief Gordon assumed defendant had been reaching for the backpack to get the weapon. Accordingly, he instructed Officer Griffin to exit defendant from the motor vehicle and handcuff him. Two additional officers arrived on scene, and they transported defendant to the Greenfield Police Department for booking. The defendant was administered his *Miranda* rights twice at the police station. He admitted to possession of the narcotics and to having taken the firearm from his mother.

When the incident call first came in, the Greenfield Fire Department called for medical

assistance. Officer Griffin determined there was no medical emergency and the Greenfield Fire Department medical team left after Officer Griffin left the scene. The medics did not ask the police to look for any information relating to defendant.

B. Discussion

The Appeals Court recently addressed community caretaking functions in *Commonwealth* v. *Sargsyan*, 99 Mass. App. Ct 114 (2021). In *Sargsyan*, the Court stated:

> "Local police officers are charged with 'community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.'" *Commonwealth* v. *Evans*, 436 Mass. 369, 372 (2002), quoting *Cady* v. *Dombrowski*, 413 U.S. 433, 441 (1973). When performing this function, an officer may "stop individuals and inquire about their well-being, even if there are no grounds to suspect . . . criminal activity." *Commonwealth* v. *Knowles*, 451 Mass. 91, 94-95 (2008). The function applies "to a range of police activities involving motor vehicles . . . in which there are objective facts indicating that a person may be [in] need of medical assistance or some other circumstance exists apart from the investigation of criminal activity that supports police intervention to protect an individual or the public." *Commonwealth* v. *Fisher*, 86 Mass. App. Ct. 48, 51 (2014). Under the community caretakingfunction, an officer may, without reasonable suspicion of criminal activity, approach and detain citizens for community caretaking purposes. See *Commonwealth* v. *Lubiejewski,* 49 Mass. App. Ct. 212, 216 (2000). In addition, "[a]n officer may take steps that are reasonable and consistent with the purpose of his inquiry, . . . even if those steps include actions that might otherwise be constitutionally intrusive." *Knowles, supra* at 95."

Sargsyan at 116-117

1. The Stop/Exit Order/Detention

The police acted lawfully in approaching, exiting, and detaining defendant when they reasonably believed defendant may have been suffering from a drug overdose. There were objectively reasonable grounds for the officers to believe an emergency existed when they observed defendant pale and "nodding" behind the steering wheel in his motor vehicle. See *Sargsyan, supra,* at 116-117; *Commonwealth* v. *McCarthy,* 71 Mass. App. Ct. 591, 594 (2008). The facts in the within case are similar to those in *Commonwealth* v. *Murdough*, 428

Mass. 760 (1999). In *Murdough*, the court concluded that the officers, as part of their community caretaking functions, acted reasonably in requesting that the defendant get out of his vehicle where the defendant was found sleeping in the vehicle, and the officers had difficulty rousing the defendant. *Id.* at 761-762.

2. Seizure of the Backpack

The within case differs from *Commonwealth* v. *McCarthy*, 71 Mass. App. Ct. 591 (2008), upon which both parties rely. There, a police officer searched a defendant's handbag to determine what drugs a defendant had taken in circumstances where the police believed the defendant was suffering from a drug overdose. The Appeals Court concluded the officer's purpose in searching the handbag was to assist the defendant rather than with the purpose of securing evidence for a possible criminal trial. *Id.* at 593, citing *Commonwealth* v. *Bates*, 28 Mass. App. Ct. 217, 219 (1990); *Commonwealth* v. *Snell*, 428 Mass. 766, 774 (1999) As such, the search was deemed to be lawful.

Here, the scene was active. Deputy Chief Gordon believed that defendant was suffering from an overdose while defendant repeatedly attempted to grab the backpack and the steering wheel. Deputy Chief Gordon reasonably based his seizure of the backpack upon both the need to ascertain defendant's identity as well as for the safety of the public, the officers, and defendant. Under those circumstances, the seizure and opening of the backpack was lawful. "An officer may take steps that are reasonable and consistent with the purpose of his inquiry, . . . even if those steps include actions that might otherwise be constitutionally intrusive." *Commonwealth* v. *Knowles*, 451 Mass. at 95. "If an officer uncovers evidence of criminal activity while operating within the scope of this inquiry, it is admissible." *Id.*, citing *Commonwealth* v. *Leonard*, 422 Mass. 504, 509, cert. denied, 519 U.S. 877 (1996).

A noncoercive inquiry initiated for a community caretaking purpose may ripen into a seizure requiring constitutional justification. See *Commonwealth* v. *Mateo-German*, 453 Mass. 838, 842 (2009). There was an objective basis to believe that defendant's well-being or the safety of the public was in immediate jeopardy. An objective view of the facts reveals that the police were engaged in caretaking rather than a criminal investigation which was motivated by the search for evidence. The Commonwealth has met its burden of demonstrating, by objective evidence, that the officers' actions were "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 (1973).

C. Conclusion

In the circumstances of this case, the officers' actions fell within the scope of the community caretaking function and did not result in an unlawful seizure.

ORDER

For the reasons set forth above, Mr. Page's Motion to Suppress is **DENIED**.

MARK D MASON
Justice of the Superior Court

DATE: February 10, 2023
Entered: 02/13/2023

CERTIFICATE OF SERVICE

I hereby certify, under the pains and penalties of perjury, that I have served a copy of the defendant's application for further appellate review to Assistant District Attorney Bethany C. Lynch, Hampshire County District Attorney's Office, One Gleason Plaza, Northampton, MA, 01060. I have made service via email.

/s/ Edward Crane /s/
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CERTIFICATE OF COMPLIANCE

I, Edward Crane, hereby certify, that this application complies with all applicable rules of court pertaining to the filing of such applications. This application was written using Bookman Old Style in 14-point size. There are 1,996 words that count towards the 2,000-word limit imposed by Mass. R. App. Pro. 27.1(b).

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