

**In The Matter Of:**

*Caniglia vs*

*Strom, et al*

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*Cpt. Russell C. Henry, Jr.*

*June 13, 2018*

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1 Q. Okay. When you were at the police training  
2 academy, did you have any instruction on when, if  
3 ever, it is appropriate to seize weapons for  
4 safekeeping?

5 A. May have been, I don't specifically recall.

6 Q. Okay. Did you have any training, any instruction  
7 at the police training academy on the community  
8 caretaking function?

9 A. May have been. I don't specifically recall.

10 Q. Okay. Did you have any training or education at  
11 the police training academy on domestic violence  
12 issues?

13 A. Yes.

14 Q. What do you recall about that?

15 A. I believe in 1993 the domestic violence laws  
16 had just recently been enacted and the mandatory  
17 arrest was part of that. So that was a new topic  
18 for law enforcement across the state that would be  
19 rolled out, I believe that was in 1992, if I  
20 remember correctly.

21 Q. Do you recall anything else about the instruction  
22 or education on domestic violence issues at the  
23 training academy?

24 A. Specifically, no.

25 Q. Did you receive any instruction at the police

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1 first-line supervisor -- what's expected. It was  
2 just general curriculum.

3 Q. Was it along the lines of administrative  
4 functions, or did you actually get into  
5 substantive law enforcement issues like arrest,  
6 detaining people, that sort of thing?

7 A. I don't recall the specific curriculum.

8 Q. Okay. Do you have any of those materials still  
9 around from those courses?

10 A. I can check. I may in a bin in my basement  
11 with -- I don't know, various things that have  
12 been accumulated over the last 25 years.

13 Q. Any idea when the last time you looked at those  
14 materials?

15 A. No idea if they're even there.

16 Q. The training with the DEA, you said it had  
17 something to do with drug enforcement?

18 A. Yes, sir.

19 Q. Was that it, generally, just drug enforcement  
20 specifically?

21 A. Yes. I was assigned to the Drug Enforcement  
22 Administration from roughly 2007 to 2010.

23 Q. Okay. The short-term schools you took that you  
24 referred to, from a day to less than a week, did  
25 any of them deal with when it's appropriate to

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1 detain a person without arresting them?

2 A. I don't recall.

3 Q. Okay. Did any of them deal with when it is  
4 appropriate to seize any kind of property without  
5 a warrant or court order?

6 A. I don't specifically recall.

7 Q. Did any of them deal with seizing weapons for  
8 safekeeping?

9 A. I don't specifically recall.

10 Q. Did any of them deal with the community caretaking  
11 function?

12 A. I don't recall.

13 Q. Did any of them deal with requiring people to have  
14 psychiatric evaluations?

15 A. I don't recall.

16 Q. In 2015 approximately how many police officers  
17 were there in Cranston, employed by Cranston?

18 A. I think we're authorized for 153. It is some  
19 number less than that. Generally we're within 10  
20 or 15 of that number.

21 Q. All right. So somewhere between 140 and 150,  
22 somewhere in that range?

23 A. That's fair to say.

24 Q. So, were they assigned to particular shifts?

25 A. Sure. Many different assignments within the

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1 A. I think it's fair to say that they could be  
2 one or the other or both.

3 Q. Okay. When did you first hear of the community  
4 caretaking function?

5 A. I hear about it periodically. It's  
6 something -- to me it's synonymous with public  
7 safety. I think the Community Caretaking Doctrine  
8 that's referred to if you -- depending on what you  
9 read.

10 Q. Okay. Did you learn about it in any formal  
11 education that you have had?

12 A. I may have. I don't recall where I learned  
13 it specifically.

14 Q. All right. Did you read about it in any materials  
15 you received?

16 A. May have. I try -- I take pride in  
17 self-education, you know, sometimes with different  
18 court decisions, whatnot, you know, I try to read  
19 those, keep up on current events. Sometimes the  
20 lack of formal training or in-service training on  
21 those type of things, so I do a lot of reading.

22 Q. Has the Cranston Police Department had any  
23 in-service -- let me back up. You referred to  
24 in-service training, what do you mean by  
25 in-service training?

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1           A.     So we have in-service training periodically  
2           throughout the year for different topics where our  
3           training division schedules a block of time,  
4           whatever it is, to periodically review issues that  
5           they feel need to be refreshed or maybe to review  
6           something, a new law, a new technique, best  
7           practice, the department is going to adopt  
8           mandatory in-service training, the domestic  
9           violence -- the law mandates we receive X amount  
10          of training per year. I believe driving while  
11          intoxicated law mandate we have recertification  
12          every year. We also have roll call training which  
13          takes place at the change of shifts when we have  
14          the officers there, we review different topics,  
15          updates on policies, we consider that a training.  
16          We have a software database called Power DMS where  
17          policy updates are disseminated, there is also  
18          materials loaded in there that officers are  
19          required to review that are considered trainings.

20       Q.     Okay. Do you know whether the Cranston Police  
21           Department has had any in-service training on the  
22           community caretaking function?

23           A.     Well, let me say this, I believe we've had --  
24           let me -- no, I don't believe we had any  
25           specifically called training on the Community

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1           Caretaking Act, so the answer would be no.

2       Q.   Well, have you had any in-service training that  
3           covered the community caretaking function,  
4           regardless of whether or not the title of the  
5           instruction was community caretaking function?

6       A.   I believe that we've had in-service training  
7           and trainings offered -- trainings put on by  
8           outside agencies that were offered to our officers  
9           that covered mental health topics.

10      Q.   Okay. And you think that the mental health  
11           training would have covered the police's authority  
12           under the community caretaking function?

13      A.   I would believe so.

14      Q.   All right. Has the community caretaking function  
15           come up in any other training other than mental  
16           health?

17      A.   Not that I can recall right now.

18      Q.   Okay. We have used the phrase in this litigation  
19           seizure of firearms for safekeeping, does that  
20           come under the community caretaking function, or  
21           is there a different authorization for that?

22                   MR. CUNNINGHAM: Objection.

23                   MR. LYONS: If you understand what I  
24           mean.

25      Q.   Let me back up. Let's break it down. Have you

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1       heard the phrase safekeeping when referring to the  
2       seizure of firearms?

3       A.    Yes.

4       Q.    What's your understanding of seizing firearms for  
5       safekeeping?

6       A.    My understanding relative to the Cranston  
7       Police Department is when situations arise where  
8       we're dealing with firearms, if we feel that the  
9       circumstances that exist at the time create a  
10      danger relative to the firearms, create a danger  
11      to the public, or to any member of the public, we  
12      would take the firearms, hold them for  
13      safekeeping, if that explain your question.

14      Q.    Okay. I'm referring specifically to the  
15      circumstance that does not involve a criminal  
16      investigation; okay?

17      A.    Yes, sir.

18      Q.    All right. So when the Cranston Police Department  
19      seizes a firearm for safekeeping, and it's not a  
20      criminal investigation, is it your understanding  
21      that its authority to do that arises from the  
22      community caretaking function?

23      A.    Yes.

24      Q.    Okay. Do you know if the Power DMS program has  
25      any materials that discuss the community



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1           caretaking function?

2           A.    Off the top of my head, I do not know.

3           There's hundreds of documents in the Power DMS

4           Just to further answer that, that also encompasses

5           our policy database in the Power DMS, additional

6           trainings and whatnot.

7       Q.    When you say policy database, like the general  
8           orders?

9           A.    Yes, sir.

10       Q.   The roll call training -- during a prior  
11           deposition of a younger police officer, I  
12           analogized it to the scenes in Hill Street Blues,  
13           and the reference went right over his head.

14       A.    I can understand that.

15                               MR. CUNNINGHAM: Please don't tell me  
16           it goes over your head.

17                               (OFF THE RECORD)

18       Q.    But is that the kind of thing where the police are  
19           all assembled either at the beginning or end of a  
20           shift, and the supervisor gives them updates on  
21           something?

22       A.    Yes.

23       Q.    Is that the kind of thing we're talking about  
24           here?

25       A.    Yes.

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1 A. No.

2 Q. Do you know whether any Cranston police officer  
3 has ever required a person to submit to a  
4 psychiatric evaluation?

5 A. Not that I'm aware of, no.

6 Q. Do you know whether the Cranston Police Department  
7 has any written materials that describe its  
8 authority under the community caretaking function?

9 A. It may be referenced in one of those policies  
10 we talked about when we first started. I'd have  
11 to have the policy in front of me.

12 Q. Do you recall a specific policy that refers --

13 A. Either the public mental health policy or  
14 maybe the BCI policy.

15 Q. Okay. Are you aware of any Rhode Island statute  
16 that recognizes the community caretaking function?

17 A. I believe -- it's my opinion that there was  
18 recently a law passed last year, I believe, under  
19 Title 40.1 that memorializes the -- I don't  
20 believe it uses those words, but I believe it  
21 memorialized the concept, gives the authority to  
22 law enforcement under Rhode Island General Law to  
23 do those functions.

24 Q. Okay. Prior to the legislation last year in 2017,  
25 were you aware of any Rhode Island statute that

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1 recognizes the community caretaking function?

2 A. There may have been under Title 40. I'd have  
3 to review the title. I believe that covers mental  
4 health.

5 Q. Are you aware of any Rhode Island regulation that  
6 recognizes the community caretaking function?

7 THE WITNESS: Rhode Island  
8 regulation?

9 MR. LYONS: Yes.

10 THE WITNESS: That the police are  
11 bound by?

12 MR. LYONS: Correct.

13 A. No.

14 Q. Are you aware of any court decision from a Rhode  
15 Island court that recognizes the community  
16 caretaking function?

17 A. Off the top of my head, I don't know the  
18 names of any court cases.

19 Q. Okay. Are you aware of any court decision from  
20 any other jurisdiction that recognizes the  
21 community caretaking function?

22 A. I don't recall the names of the cases at this  
23 time.

24 Q. All right. Do you recall from what jurisdiction  
25 the cases may have been, even if you don't recall

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1 the names?

2 A. No. As I stated earlier, I do a lot of  
3 reading, self-education, to try and maintain my  
4 knowledge on different court cases.

5 Q. Do you recall in what circumstances those courts  
6 recognize the community caretaking function?

7 A. I read one about motor vehicle accidents and  
8 the resulting search of a motor vehicle. That's  
9 probably the most recent one I remember.

10 Q. Okay. Are you aware of any court decisions  
11 recognizing the community caretaking function, and  
12 stating that it authorizes police to seize  
13 property, including firearms, from a person's  
14 residence?

15 A. Off the top of my head, no.

16 Q. Are you aware of any court decision recognizing  
17 the community caretaking function and stating it  
18 authorizes police to require someone to leave  
19 their residence and go for a psychiatric  
20 evaluation?

21 A. No.

22 Q. Other than what we've talked about so far, have  
23 you had any other training on the seizing of  
24 firearms for safekeeping?

25 THE WITNESS: Specific to that

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1 Q. Right. When we looked at the prior record of an  
2 in-service training, and I'm not sure where it  
3 went, it listed several specific topics.

4 A. Right. Domestic violence, mental health,  
5 intro to safety net, 2011.

6 Q. Correct. Just so we're clear, that's Exhibit 14  
7 you're looking at right now?

8 A. Yes.

9 Q. So what I'm getting at is whenever there is record  
10 of in-service training similar to Exhibit 14,  
11 would it list the topics that were presented?

12 A. I would assume that the training lieutenant  
13 keeps the curriculum of what's presented when, to  
14 who.

15 Q. Okay. In other words, I should ask the training  
16 lieutenant for whatever records there are of any  
17 presentations of in-service training dealing with  
18 search and seizure law?

19 A. Yes.

20 Q. Okay. If you look at, going back to Exhibit 8, if  
21 you go to Page 10, please. There's a slide  
22 entitled Exceptions to the Search Warrant  
23 Requirement; do you see that?

24 A. Yes.

25 Q. There are ten items listed; do you see those?

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1 A. Yes.

2 Q. Number 10 says Community Care; do you see that?

3 A. Yes.

4 Q. Is that the community caretaking function we've  
5 been discussing?

6 A. Yes.

7 Q. So that would be an exception to the search  
8 warrant requirement?

9 A. Yes.

10 Q. Then if you will go to Page 32, there's one slide  
11 which is entitled Community Caretaking Function;  
12 do you see that?

13 A. Yes.

14 Q. Okay. Do you recall seeing this slide in any  
15 presentation at the Cranston Police Department?

16 A. I don't recall it specifically, no.

17 Q. Okay. It refers to one case, if you see, State  
18 versus Roussell; do you see that?

19 A. Yes.

20 Q. It says, Trooper investigates erratic operation of  
21 motor vehicle by opening passenger side door of  
22 motor vehicle. Makes impaired operator  
23 observations. Not a search because officer  
24 engaged in community caretaking; do you see that?

25 A. Yes.

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1 Q. Is that the case you were recalling previously  
2 that dealt with the community caretaking function?

3 A. No. The facts were about a seizure of some  
4 marijuana by a trooper, they were investigating a  
5 motor vehicle accident. It was a traffic tribunal  
6 issue.

7 Q. You don't recall the name of the case, though?

8 A. That was the most recent one I saw.

9 Q. Have you ever read State versus Roussell?

10 A. I don't know, I couldn't tell you, unless I  
11 read some more facts. I don't recall reading it.

12 Q. Does this slide describe your understanding of the  
13 community caretaking function?

14 A. Part of it.

15 Q. Do you know if you have seen any other  
16 presentation that sets forth the rest of your  
17 understanding of the community caretaking  
18 function?

19 MR. CUNNINGHAM: Objection.

20 A. I don't recall off the top of my head right  
21 now.

22 Q. Okay. The first part says,  
23 counselor/midwife/emissary/taker - tasks not  
24 involved with apprehension of alleged criminals;  
25 do you see that?

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1 A. Yes.

2 Q. Does that part describe the police officer's  
3 community caretaking function?

4 A. To me it means the initial intent of the act  
5 taken by the officers wasn't to make an  
6 apprehension of an alleged criminal or to  
7 investigate a crime.

8 So with respect to the case they made the  
9 little snippet of, I think the point they're  
10 trying to make in the training was the trooper had  
11 opened the passenger side door of the motor  
12 vehicle to make observations. They deemed it was  
13 not a search because he was checking on the  
14 well-being of the erratic operator.

15 Q. Do you know if there's any Rhode Island decisions  
16 dealing with the community caretaking function  
17 apart from those dealing with the operation of a  
18 motor vehicle?

19 A. No.

20 MR. CUNNINGHAM: Can we take a  
21 two-minute break?

22 (BRIEF RECESS)

23 Q. Actually, I have a couple more background  
24 questions, and then we'll get to this. I see  
25 you're carrying a sidearm today?



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1 A. Yes.

2 Q. What is that?

3 A. Glock model 22, .40 caliber. This is  
4 actually model 23, sorry, it's a smaller one.

5 Q. Is this issued by the Cranston Police Department?

6 A. Yes.

7 Q. All right. Do you have any other firearms issued  
8 by the Cranston Police Department?

9 A. No.

10 Q. Do you own any firearms yourself?

11 A. Yes.

12 Q. What do you own?

13 A. Glock model 43, .9 millimeter, that's it.

14 Q. That's it?

15 A. That's it.

16 Q. Okay. Have you ever had your firearm seized?

17 A. No.

18 Q. Have you ever had the police come to your house  
19 for a domestic incident?

20 A. Never.

21 Q. Have you ever gone to a police officer's house for  
22 a domestic incident?

23 A. Yes.

24 Q. Okay. How many times?

25 A. At least once that I can remember -- twice