Case No. 19-1764

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

EDWARD A. CANIGLIA,
Plaintiff/Appellant

v.

ROBERT F. STROM, as the Finance Director of the City of Cranston; CITY OF CRANSTON; COLONEL MICHAEL J. WINQUIST, in his official capacity as Chief of the Cranston Police Department; RUSSELL C. HENRY, JR., individually and in his official capacity as an Officer of the Cranston Police Department; ROBERT QUIRK, individually and in his official capacity as an officer of the Cranston Police Department; BRANDON BARTH, individually and in his official capacity as an officer of the Cranston Police Department; JOHN MASTRATI, individually and in his official capacity as an officer of the Cranston Police Department; WAYNE RUSSELL, individually and in his official capacity as an officer of the Cranston Police Department; AUSTIN SMITH, individually and in his official capacity as an officer of the Cranston Police Department,
Defendants/Appellees

On Appeal from the United States District Court for the District of Rhode Island

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BRIEF FOR THE DEFENDANTS/APPELLEES,

ROBERT F. STROM; CITY OF CRANSTON; COLONEL MICHAEL J. WINQUIST; RUSSELL C. HENRY, JR.; ROBERT QUIRK; BRANDON BARTH; JOHN MASTRATI; WAYNE RUSSELL; AUSTIN SMITH

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STATEMENT OF THE CASE

On August 20, 2015, Appellant, Edward A. Caniglia ("Appellant") and his wife, Kim Caniglia ("Mrs. Caniglia"), had an argument over a coffee mug at their residence in Cranston, Rhode Island. A22.[1] During the argument, Appellant told Mrs. Caniglia that her "family wasn't all that great," that she "liked [her] brothers

[1] Appellees refer to the Appendix submitted by Appellant with his brief.

better than" Appellant, and that she should "go live with" them. A23. Mrs. Caniglia asked Appellant "what's wrong? Why aren't you happy? I can't make you happy, you have to do that yourself. And that's when [Appellant] walked into the bedroom . . . [and] came out with a gun, threw it on the table, and said why don't you just shoot me and put me out of my misery." Id. (emphasis added).

After Appellant told his wife to "shoot" him, Mrs. Caniglia asked him "[w]hat are you thinking?" Id. Mrs. Caniglia told Appellant that she was going to contact 911 because she wanted Appellant to know that by bringing out the gun "he brought [the argument] to a different level." Id. Mrs. Caniglia thought that Appellant's behavior was "shocking." Id. Shortly after she informed Appellant that she was going to contact 911, Appellant left the residence. Id. Mrs. Caniglia, however, did not contact 911. Id.

After Appellant left the residence, Mrs. Caniglia put the gun "between the mattress and the box spring" in their bedroom. Id. At her deposition, Mrs. Caniglia testified that it was at this point she discovered that the magazine was not in the gun. Id. She testified that she took the magazine "out from underneath the bed and . . . hid it in a drawer" in the bedroom. Id. In an affidavit executed before her deposition, however, Mrs. Caniglia averred that, during the argument, Appellant brought an unloaded gun and a magazine to her and implored her to "shoot me now and get it over with." A23-A24.

Mrs. Caniglia hid the gun and the magazine because she was worried about Appellant's "state of mind." A24. Appellant was "depressed," and Mrs. Caniglia was afraid that he "was going to do something with the gun and the magazine" and "hurt himself" or "take[] his own life." Id.

Before Appellant returned to the residence, Mrs. Caniglia thought it best to "pack a bag" and "go to a hotel for a night." Id. When Appellant returned to the residence, he informed Mrs. Caniglia that the argument was "all [her] fault . . . ." Id. After that comment, Mrs. Caniglia left the residence and went to the Econo Lodge on Reservoir Avenue in Cranston. Id. At some point during that evening, Mrs. Caniglia spoke to Appellant by telephone. Id. Appellant asked Mrs. Caniglia to come home, but she refused because she thought they needed time to "chill." Id. Appellant was upset and angry. Id.

At some point the following morning, Mrs. Caniglia contacted the Cranston Police Department ("CPD") and "requested an officer to do a well call." Id. Mrs. Caniglia was "incredibly worried" that Appellant was going to harm himself or commit suicide. Id. During the telephone call to the CPD, Mrs. Caniglia requested an escort to her residence because she was a "little afraid" of Appellant. Id. Mrs. Caniglia also informed the CPD that (1) she and Appellant had "gotten into a verbal fight"; (2) Appellant took a gun and said "shoot me"; (3) Appellant took the gun and magazine and threw it on the table; (4) she spent the night in a hotel and was now in

the parking lot of a local restaurant; and (5) she "hid the gun" and put the magazine in a drawer. A24-A25. Mrs. Caniglia also believes that she informed the CPD that Appellant was depressed. A141.

As a result of Mrs. Caniglia's telephone call to the CPD, Cranston Police Officers John Mastrati ("Officer Mastrati"), Austin Smith ("Officer Smith") and Sergeant Brandon Barth ("Sgt. Barth") were dispatched to the restaurant. A25. At the restaurant, Mrs. Caniglia informed a CPD officer "about the gun, about the words [Appellant] said and what [she] did with the gun" and magazine. Id. Mrs. Caniglia informed Officer Mastrati that she had an argument with Appellant and that during the argument Appellant took out an unloaded firearm and a magazine and asked Mrs. Caniglia to use it on him. Id. Mrs. Caniglia stated that she was concerned about Appellant's safety and what she would find when she returned home and told Officer Mastrati that she was worried about Appellant committing suicide. Id.

After speaking with Mrs. Caniglia, Officer Mastrati contacted Appellant by telephone. Appellant agreed to speak to Officer Mastrati at Appellant's residence. Id. CPD officers informed Mrs. Caniglia to follow them to the Caniglia residence but to stay in her car when they arrived at the residence. Id. Upon arrival at the residence, Officer Mastrati spoke to Appellant outside of the house, near or about the deck/porch area of the property. A26. Sgt. Barth and Officer Smith, along with Officer Wayne Russell, were also on scene, in or about the porch area. Id.

At the residence, Appellant informed Officer Mastrati that he brought the gun out during the argument with Mrs. Caniglia. Id. Appellant "pretty much told [Officer Mastrati] the same story that [Mrs. Caniglia] told" him. Id. Appellant corroborated what Mrs. Caniglia informed Officer Mastrati about the argument, the gun, and asking Mrs. Caniglia to shoot him. Id. Appellant admitted to Officer Mastrati that he and Mrs. Caniglia had had an argument over a coffee mug and he was "sick of the arguments" and he took out his unloaded handgun and told his wife to "just shoot [him]" because he "couldn't take it anymore." Id.

At some point after Mrs. Caniglia arrived in the area at the residence, an officer approached her car and told her she could come to the residence. Id. When she arrived at the residence, Appellant asked her why she had contacted the CPD. Id. Mrs. Caniglia informed Appellant that she was worried about him. Id. Appellant was "very upset" and "agitated" because Mrs. Caniglia contacted the CPD, so she went back to her car. A27, A143. While at the residence, Mrs. Caniglia overheard Appellant inform an officer that he had an argument with Mrs. Caniglia about a coffee mug and that he "did bring out a gun and set it on the table and told [Mrs. Caniglia] to just go ahead and shoot him and put him out of his misery." A27.

Although Appellant informed Officer Mastrati that he was not suicidal, Officer Mastrati was not convinced because a "normal person would [not] take out a gun and ask his wife to end his life . . . ." Id. Officer Mastrati believed that

Appellant was a danger to himself. Id. Sgt. Barth considered Appellant's statement to his wife to shoot him to be a suicidal statement. Id.

The CPD seized two guns and ammunition from the Caniglia residence for safekeeping. Id. Mrs. Caniglia showed the CPD the location of the guns and ammunition. Id. The guns and ammunition were seized from the bedroom and a garage. Id. Sgt. Barth made the decision to seize the guns, and that decision was approved by Captain Russell Henry ("Captain Henry"). Id. Captain Henry believed that if the CPD had left Appellant at the residence "with the firearms, potentially, he's in danger, [Mrs. Caniglia] could be in danger, the neighbors could be in danger, any person that comes in contact with Mr. Caniglia could be in danger." Id.

An ambulance from the Cranston Fire Department later arrived on scene. A959. Richard Greene, a rescue lieutenant, spoke with the officers, who told him that Appellant "wanted his wife to shoot him with his own gun." A959-A960. Appellant then agreed to be transported to Kent County Hospital for a medical evaluation. A960. Appellant was evaluated at the hospital but was not admitted. A28. Appellant admitted to a hospital employee that during the argument with Mrs. Caniglia he retrieved an unloaded gun and told Mrs. Caniglia that "she should just shoot him and put him out of his misery." Id. Appellant admitted to asking Mrs. Caniglia to "shoot [him] now and get it over with." Id.

Appellant was not charged with any crime with respect to the incident. Id. The CPD did not prevent Appellant from obtaining any firearms after the August 21, 2015 incident. Id. On or about October 1, 2015, Appellant's attorney sent Colonel Michael Winquist a letter requesting the return of his guns. Id. Appellant's guns were returned to him in late December 2015. Id.

At the conclusion of the discovery period, the parties cross-moved for summary judgment. The District Court granted Appellant's motion with respect to his claim for lack of process due for the return of his guns and denied his motion as to all other claims. The District Court, however, granted summary judgment to Appellees on all other claims in the complaint. Thereafter, Appellant stipulated to a nominal sum of damages in the amount of $1.

SUMMARY OF ARGUMENT

The District Court appropriately held that Appellees properly executed their community caretaking function in seizing both Appellant and his firearms. Appellees acted within the realm of reason when they responded to the Caniglia residence on August 21, 2015. The conduct of Appellees was in the heartland of the community caretaking function. This Circuit has never held that the application of the community caretaking function is strictly limited to the motor vehicle context and has stressed that the application of this flexible function is based on reasonableness. Furthermore, although Appellant argues that Article 1, Section 6 of

the Rhode Island Constitution is stricter than the Fourth Amendment in the circumstances presented here, that alleged additional strictness has been applied selectively by the Rhode Island Supreme Court in cases clearly distinguishable from this matter.

The individual Appellees are entitled to qualified immunity in this matter. Given that the reach of the community caretaking function is poorly defined outside of the automobile context and that case law reveals that the scope and boundaries of the function are nebulous, it is not clearly established that the community caretaking function does not apply to police activity in the home. Thus, an objectively reasonable officer in the individual Appellees' position would not have understood that he or she was violating Appellant's constitutional rights by seizing a perceived suicidal individual and his firearms.

The District Court properly held that Appellees did not violate Appellant's rights under the Rhode Island Firearms Act ("RIFA"). The RIFA does not apply to this matter because Appellees returned Appellant's firearms to him. Procedurally, Appellant's attempt to circumvent the RIFA by pleading a claim under R.I. Gen. Laws § 9-1-2 fails because a municipality cannot commit a crime and, in addition, the individual Appellees are not civilly liable because they are agents of a disclosed principal.

The District Court also properly held that Appellees did not violate Appellant's Second Amendment rights. The instant matter does not implicate the Second Amendment because Appellant was not precluded from acquiring additional firearms.

Finally, the District Court properly held that Appellees did not violate Appellant's rights under the Rhode Island Mental Health Law ("RIMHL"). Given the circumstances, Appellant's transport to the hospital to receive a psychological evaluation was eminently reasonable. Furthermore, Appellees did not violate the RIMHL because they did not make an application for a medical certification, did not request that Appellant be admitted to a medical facility, and did not cause Appellant to be admitted to a medical facility.

ARGUMENT

I. STANDARD OF REVIEW

This Court reviews a grant of summary judgment de novo. Ocasio-Hernandez v. Fortuno-Burset, 777 F.3d 1, 4 (1st Cir. 2015) (citing Velázquez-Pérez v. Developers Diversified Realty Corp., 753 F.3d 265, 270 (1st Cir. 2014)). The fact that all parties moved for summary judgment does not change this standard. Blumofe v. Pharmatrak, Inc., 329 F.3d 9, 17 (1st Cir. 2003) (citing Segrets, Inc. v. Gillman Knitwear Co., 207 F.3d 56, 61 (1st Cir. 2000)). Summary judgment is appropriate when "there is no genuine issue of material fact and the moving party is

entitled to judgment as a matter of law." Perez v. Lorraine Enters., 769 F.3d 23, 29 (1st Cir. 2014).

"A 'genuine' issue is one on which the evidence would enable a reasonable jury to find the fact in favor of either party," and "[a] 'material' fact is one that is relevant in the sense that it has the capacity to change the outcome of the jury's determination." Id. "A genuine issue of material fact 'must be built on a solid foundation – a foundation constructed from materials of evidentiary quality.'" Perry v. Roy, 782 F.3d 73, 78 (1st Cir. 2015) (quoting García-González v. Puig-Morales, 761 F.3d 81, 87 (1st Cir. 2014)). The Court "take[s] the facts and all reasonable inferences therefrom in the light most hospitable to the nonmoving party." United States v. McNicol, 829 F.3d 77, 80 (1st Cir. 2016).

II. THE DISTRICT COURT PROPERLY HELD THAT THE SEIZURES DID NOT VIOLATE THE FOURTH AMENDMENT.

Appellees' seizures of Appellant and his firearms were constitutionally reasonable by virtue of the community caretaking function, and therefore did not violate the Fourth Amendment or Article 1, Section 6 of the Rhode Island Constitution. Contrary to Appellant's contention, the community caretaking function, as defined both by this Circuit and others, applies to non-vehicle activity. Furthermore, application of the community caretaking function in this matter is not, as Appellant contends, affected by applicable state law, because the function's

application under Article 1, Section 6 of the Rhode Island Constitution does not differ from its application under the Fourth Amendment.

A. The Community Caretaking Function Applies to Non-Vehicle Activity.

"[T]he ultimate touchstone of the Fourth Amendment is 'reasonableness.'" United States v. Chaney, 647 F.3d 401, 410 (1st Cir. 2011). As part of their community caretaking function, police officers "combat actual hazards, prevent potential hazards from materializing and provide an infinite variety of services to preserve and protect public safety." United States v. Gemma, 818 F.3d 23, 32 (1st Cir. 2016) (emphasis added). In this capacity, an officer is a "jack-of-all emergencies . . . expected to aid those in distress . . . ." United States v. Rodriguez-Morales, 929 F.2d 780, 784 (1st Cir. 1991). The community caretaking function, therefore, "is a catchall for [a] wide range of [police] responsibilities[,]" and gives officers a "great deal of flexibility." Lockhart-Bembery v. Sauro, 498 F.3d 69, 75 (1st Cir. 2007). The community caretaking function applies when an officer has reason to believe that someone is at risk of injury or harm. See Sutterfield v. City of Milwaukee, 751 F.3d 542, 573 (7th Cir. 2014).

"[T]he ultimate inquiry [in a community caretaking situation] is whether, under the circumstances, the officer acted within the realm of reason." Lockhart-Bembery, 498 F.3d at 75 (emphasis added) (internal quotation marks and citation omitted). Reasonableness has a "protean quality" in the community caretaking

context, and involves a "concept, not a constant." Rodriguez-Morales, 929 F.2d at 785. What may be "reasonable in one type of situation may not be reasonable in another." Id.

This Circuit has never held that the community caretaking function is strictly limited to the automobile context. In fact, the Court discussed the potentiality of applying it to the warrantless search of a home in Matalon v. Hynnes, 806 F.3d 627 (1st Cir. 2015). In that case, after a report of a robbery, police entered and searched a home without a warrant and were civilly sued by the plaintiff on Fourth Amendment grounds after the plaintiff was acquitted of the criminal charges. At the close of the evidence in the civil matter, the officer who had searched the house moved for judgment as a matter of law based on qualified immunity and the community caretaking function. Id. The trial court denied the motion, and the jury found that no "constitutionally accepted rationale" justified the search. Id. at 631-32. The officer appealed, seeking "refuge" in the community caretaking function. Id. at 632-33. This Court noted the genesis of the function and that it had "evolved into a catchall for the wide range of responsibilities that police officers must discharge aside from their criminal enforcement activities." Id. at 634 (emphasis added) (internal quotation marks omitted). The Court acknowledged that the function has most often been applied with respect to motor vehicles and that its applicability "has been far less clear" in cases involving searches of homes, but also

stated that "[a]lthough we do not decide the question [of whether the community caretaking function applies to searches of homes], we assume, favorably to [the appellant], that the community caretaking exception may apply to warrantless residential searches." Id. (emphasis added).

Although the "parameters of the community caretaking exception are nebulous in some respects (such as whether the exception applies to all residential searches), the heartland of the exception" is well defined. Id. (emphasis added). The community caretaking function requires a court to "look at the function performed by the police officer when the officer engages in a warrantless search or seizure." Id. (emphasis in original) (internal quotation marks omitted). The court in Matalon stressed that the community caretaking function is "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." Id. (emphasis added) (internal quotation marks omitted). "[I]t is therefore not surprising that the courts that have addressed the exception have stressed the separation between the police's community caretaking functions and the normal work of criminal investigation." Id. at 635 (citing, inter alia, United States v. Quezada, 448 F.3d 1005 (8th Cir. 2006) (relying upon the community caretaking function in upholding a warrantless search of a home) and State v. Deneui, 775 N.W.2d 221, 241 (S.D. 2009) (concluding that the entry into the home was reasonable because the officers entered the home "not as part of a criminal

investigation, but in pursuance of their community caretaking function")). In the end, however, even assuming the favorable assumption of application of the function, the Matalon court determined that the community caretaking function did not apply to the search because the police were acting pursuant to a criminal investigation – conduct outside the heartland of the community caretaking function. 806 F.3d at 634-35.

It is undisputed that the CPD arrived at Appellant's residence not as part of a criminal investigation but as a result of Mrs. Caniglia's request to conduct a "wellness check" because she was concerned about Appellant's mental and emotional well-being. Thus, the CPD's conduct was in the heartland of the community caretaking function. Id. "[H]omes cannot be arbitrarily isolated from the community caretaking equation. The need to protect and preserve life or avoid serious injury cannot be limited to automobiles." Deneui, 775 N.W.2d at 239. "[P]olice officers may, without reasonable suspicion of criminal activity, intrude on a person's privacy to carry out community-caretaking functions to enhance public safety." State v. Stanley, No. 13 MA 159, 2014 Ohio App. LEXIS 5451, at *4 (Dec. 19, 2014). The key to such permissible action is the reasonableness required by the Fourth Amendment. Id. The "community-caretaking function may initially explain why police enter a home, and depending on what occurs there, may further justify exploration of other parts of the home." Id.

In Sutterfield, the Seventh Circuit recognized "powerful arguments in favor of the temporary seizure [of a gun] as a prudential measure" in situations where officers remove a suspected suicidal individual from a home where guns are stored. 751 F.3d at 571. In Sutterfield, the court assumed without deciding that the seizure of a suicidal individual's gun violated the Fourth Amendment but determined that the individual defendants were entitled to qualified immunity. See id. The Sutterfield court acknowledged the "lack of clarity in Fourth Amendment case law as to the appropriate legal framework that should be applied to warrantless intrusions motivated by purposes other than law enforcement evidence-gathering." Id. at 551. In discussing the competing interests implicated by the seizure, however, the Sutterfield court recognized that it "was natural, logical, and prudent for [the police] to believe that [the] firearm should be seized for safekeeping until such time as [the suspected suicidal individual] was evaluated and it was clear that [the individual] no longer posed a danger to herself." Id. at 570 (emphasis added); see also Arden v. McIntosh, 622 F. App'x 707, 711 n.2 (10th Cir. 2015) (noting in its qualified immunity analysis that a "reasonable police officer might have thought, upon discovery of [a] gun [in a residence during a welfare check] that he was authorized by his community caretaking function to seize the gun for safekeeping").

B. Article 1, Section 6 of the Rhode Island Constitution is Not Stricter Than the Fourth Amendment.

Appellant argues that Article 1, Section 6 of the Rhode Island Constitution offers more protection against searches and seizures than does the Fourth Amendment. Appellant's Brief at 11. The Rhode Island Supreme Court has "previously recognized [its] right to 'establish a higher standard of protection [for a criminal defendant] than [that which he] might otherwise be afforded under the Fourth Amendment.'" State v. Von Bulow, 475 A.2d 995, 1019 (R.I. 1984) (quoting State v. Ahmadjian, 438 A.2d 1070, 1082 (R.I. 1981)). The Rhode Island Supreme Court, however, has exercised this right selectively in specific factual situations, as evidenced by the cases referenced by Appellant. See Von Bulow, 475 A.2d at 1019 ("[t]he needs of society [did not] demand swift action . . . and the [defendant's] privacy interest had regained its paramount importance" when police searched a bag without warrant); see also Pimental v. Dep't of Transp., 561 A.2d 1348, 1352 (R.I. 1989) ("[N]o control or discretion can justify roadblock seizures under Rhode Island law because they are conducted totally in the absence of probable cause or reasonable suspicion that a motor-vehicle violation had occurred."); State v. Maloof, 333 A.2d 676, 681 (R.I. 1975) (emphasis added) ("In the interest of giving the full measure of protection to an individual's privacy, particularly as it relates to electronic eavesdropping, we shall insist upon a closer adherence to the Rhode Island statute . . . .").

Moreover, "[i]n most contexts the Fourth Amendment provides ample protection against unreasonable searches and seizures. 'The decision to depart from minimum standards and to increase the level of protection should be made guardedly and should be supported by a principled rationale.'" Duquette v. Godbout, 471 A.2d 1359, 1361 (R.I. 1984) (quoting State v. Benoit, 417 A.2d 895, 899 (R.I. 1980)). The Rhode Island Supreme Court has repeatedly held that "article 1, § 6 has the same effect as the fourth amendment of the Federal Constitution." State v. Berker, 391 A.2d 107, 111 (R.I. 1978) (citing State v. Davis, 251 A.2d 394 (R.I. 1969)); see also State v. Foster, 842 A.2d 1047, 1050 n.3 (R.I. 2004) (noting that the Fourth Amendment is "substantively the same as Article 1, Section 6 of the Rhode Island Constitution"). The District of Rhode Island has also held that, generally, "Art. 1, § 6 of the Rhode Island Constitution is co-extensive with the Fourth Amendment of the United States Constitution." Brousseau v. Town of Westerly, 11 F. Supp. 2d 177, 183 (D.R.I. 1998). Appellees submit, therefore, that Article 1, Section 6 of the Rhode Island Constitution is no stricter than the Fourth Amendment with respect to the instant matter.[2]

[2] Even if Article 1, Section 6 were stricter than the Fourth Amendment, Appellant has not articulated to what degree of additional strictness the community caretaking function should be subjected, or what that additional strictness would require.

C. Appellees' Seizures of Appellant and His Firearms Were Reasonable Under These Circumstances.

Community caretaking activities are varied and are performed for different reasons. Courts that have expanded the community caretaking function outside of the automobile context analyze the application of the function under a general reasonableness standard. "[D]etermining whether a search is 'reasonable' depends on the context within which a search takes place . . . ." Brousseau, 11 F. Supp. at 180. In fact, more than 37 years ago, the Rhode Island Supreme Court recognized that the community caretaking function includes situations where a police officer acts "as a domestic relations counselor in an attempt to reconcile two belligerent spouses . . . ." State v. Cook, 440 A.2d 137, 139 (R.I. 1982).

In People v. Hand, 946 N.E.2d 537 (Ill. App. Ct. 2011), the defendant challenged a police officer's warrantless entry into her apartment. Id. Police were called to the apartment by the defendant's husband who was concerned about the defendant and his children who were also in the apartment. Id. at 540. The defendant's husband asked police for assistance in retrieving some personal items from the apartment. Id. Police attempted to gain consensual entry into the apartment, but the defendant resisted and a scuffle between the defendant and police ensued. Id. Police eventually placed defendant under arrest. Id. The defendant moved to quash the arrest and suppress evidence arguing that there was no justification for the warrantless entry into her apartment. Id. at 542.

In Hand, the court held that "two general criteria must be present for a valid community caretaking exception to a prohibition against a warrantless search." Id. at 543-44. The court determined that in order for the community caretaking exception to apply outside the automobile context, (1) the police must be performing some function other than the investigation of a crime, and (2) the scope of the search must be reasonable because it was done to protect the safety of the public. Id. at 544. The objective circumstances of the situation (not the subjective motivation of the police) must be scrutinized when ruling on the validity of the search. Id.[3] The question of reasonableness is measured in objective terms and is determined by evaluating the totality of the circumstances: the "court must balance a citizen's interest in going about his or her business free from police interference against the public's interest in having police officers perform services in addition to strictly law enforcement." Id. at 544. The court concluded that the community caretaking function justified the police officer's warrantless entry into the defendant's apartment. Id. at 545.

[3] The reasonableness inquiry with respect to the community caretaking function is an objective one. Rodriguez-Morales, 929 F.2d at 787 (noting that impoundment of plaintiff's vehicle in exercise of the community caretaking function was "amply justified on objective grounds" and that "any speculation into the [police officers'] subjective intent would be supererogatory"); see also Damon v. Hukowicz, 964 F. Supp. 2d 120, 147 (D. Mass. 2013) ("[E]ven if [the officer] was motivated in part by something other than safety concerns, his action was lawful if, from an objective standpoint, it was also a reasonable exercise of his community caretaking function.").

"Whether a given community caretaker function will pass muster under the Fourth Amendment so as to permit a warrantless home entry depends upon whether the community caretaker function was reasonably exercised under the totality of the circumstances of the incident under review." State v. Pinkard, 785 N.W.2d 592, 598-99 (Wis. 2010) (emphasis added) (concluding that a reasonably exercised community caretaking function may permit a warrantless entry into a home). In order to determine whether the community caretaking function may justify a warrantless entry into a home, the Pinkard court applied a three-part test. Id. at 601. Pinkard's test examined (1) whether a search or seizure under the Fourth Amendment had occurred; (2) if it had, whether the police were exercising a bona fide caretaking function; and, (3) if so, whether the public interest outweighs the intrusion upon the privacy of the individual such that the community caretaker function was reasonably exercised within the context of the home. Id.

For purposes of this argument, Appellees presume a seizure. With respect to the second element, however, the CPD was clearly exercising a bona fide caretaking function. Several decisions support this position. In United States v. Taylor, No. 3:09CR249, 2009 U.S. Dist. LEXIS 95555 (E.D. Va. Oct. 14, 2009), a police officer was on routine patrol when he received a call to respond to a four-year-old girl wandering alone. Id. at *1. The officer responded and found the young girl and she took the officer to her home. Id. The door to the home was open and the officer

followed the child into the home. Id. at *2. The officer discovered the defendant in a bedroom and the defendant informed the officer that the child was his daughter. Id. While speaking to the defendant, the officer noticed several bullets in a plastic bag in plain view on a bedside table. Id. The defendant could not produce any form of identification but informed the officer that his name was Anthony Jackson and that he did not know his social security number nor the address of the home. Id. at *3. The police investigated the name Anthony Jackson through several record systems but found no such person. Id. The police officer then performed a protective sweep of the area and located a firearm beneath the mattress where the defendant had been lying. Id. at *4. The police subsequently spoke to the child's grandmother and mother, uncovered the defendant's identity, and discovered that he had two felony convictions. Id. at *4-5. The police arrested the defendant for being a felon in possession of a firearm. Id. at *5.

The government defended the warrantless entry into the home by arguing that police were performing a community caretaking function. Id. at *7-8. The court stated that the community caretaking function requires the court to look at the function performed by the police officer. Id. at *8. After summarizing several cases analyzing the community caretaking function, the court held that the police officer entered the residence as a result of a "routine police procedure to attempt to locate the parent or guardian of a lost child." Id. at *18. The court concluded that the

police officer's entry into the house was unrelated to the detection, investigation, or attempt to acquire evidence of a crime. Id. at *19. "'Life-or-death' circumstances did not exist, but they are not required. An officer is not expected to leave his common sense at home." Id. The court concluded that the officer's entry into the home was pursuant to the officer's community caretaking function and was reasonable under the Fourth Amendment. Id. at *17-22.

A "police officer's community caretaking function justifies the officer's seizure of an individual in order to ensure the safety of the public and/or the individual, regardless of any suspected criminal activity." Mucci v. Town of N. Providence, 815 F. Supp. 2d 541, 545 n.1 (D.R.I. 2011). "As community caretakers, officers may enter a home without a warrant when the officer has a reasonable belief that an emergency exists requiring his or her attention." Graham v. Barnette, No. 17-cv-2920(JNE/SER), 2018 U.S. Dist. LEXIS 210791, at *12 (D. Minn. Dec. 14, 2018) (internal quotation marks omitted) (finding that community caretaking standard was appropriate since officers entered the home on a welfare check); see also Lundak v. Nyseth, No. CX-01-599, 2001 Minn. App. LEXIS 1058, at *6 (Sept. 18, 2001) ("[L]ogic suggests that [seizure of weapons or other potential instruments of suicide] would be in an officer's discretion during an investigation of a report of a possible suicide threat."). The community caretaking function "has [an] expansive temporal reach, in that its primary focus is on the purpose of police action rather than

on its urgency." Sutterfield, 751 F.3d at 561 (emphasis added); see generally Matalon, 863 F.3d at 635 (the court must look to the function performed by the police). Moreover, because the community caretaking function "presumes that the police are not acting for any law enforcement purpose, whether or not there is time to seek a traditional criminal warrant is immaterial . . . ." Sutterfield, 751 F.3d at 561 (emphasis added); see also Hand, 946 N.E.2d at 544 (probable cause is not a factor when police are engaging in a community caretaking function).

In Sutterfield, the Seventh Circuit struggled with the question of whether the community caretaking function allowed police to forcibly enter the home of a suicidal individual and open a locked container and seize a gun that was found inside the container. 751 F.3d at 542. In Sutterfield, a psychiatrist placed a 911 telephone call to report that the plaintiff had left an appointment with her and had expressed suicidal thoughts. Id. at 545. The psychiatrist informed police that the plaintiff, after receiving some bad news, had remarked "I guess I'll go home and blow my brains out." Id. The psychiatrist told the police that the plaintiff wore an empty gun holster to her appointment; thus, she surmised that the plaintiff owned a gun. Id. Police eventually located the plaintiff at her home, but the plaintiff would not engage with the police except to inform them that she had "'called off' the police." Id. at 546. Police, however, forcibly entered the house and the plaintiff was handcuffed and placed into custody. Id. at 544. Once the plaintiff was secured, police performed

a protective sweep of the house; one officer observed a compact disc carrying case in plain view. Id. The officer forced the case open and discovered a handgun. Id. The police seized the weapon for "safekeeping." Id. at 547. Another officer testified that he thought it was appropriate to seize the weapon so that the plaintiff, when released from the hospital, would not be able to use the gun to commit suicide. Id.

Sutterfield held that community caretaking cases cannot be viewed through the standard "lens" of criminal law enforcement. Id. at 551; see also Matalon, 806 F.3d at 635 (noting that courts stress the separation between the community caretaking function and the "normal work of criminal investigation"). Courts have "long recognized the important role that police play in safeguarding individuals from dangers posed to themselves and others – a role that will, in appropriate circumstances, permit searches and seizures made without the judicial sanction of a warrant." Sutterfield, 751 F.3d at 551 (emphasis added).

The Sutterfield court, however, was frustratingly forestalled from finding that the community caretaking function justified the warrantless entry into the plaintiff's home and the seizure of the weapon. In dicta, the court stated that "as a matter of doctrine" the community caretaker function would

> potentially be the best fit for this case, in that it captures the beneficent purpose for which police entered [the plaintiff's] home . . . . And because there is no suggestion that police had any law enforcement motive in entering the home, there would be a ready basis on which to distinguish criminal cases . . . which demand a search warrant when there is, in fact, time in which to seek one.

Id. (emphasis added). The court, however, noted that an earlier circuit decision precluded extending the community caretaking function beyond the automobile context and specifically emphasized that not only had the defendant not asked the court to review that decision, but the defendant also failed to argue the community caretaking function on appeal. Id. at 561.

The courts that have extended the community caretaking function beyond the automobile context have done so pursuant to the Fourth Amendment's reasonableness decree. See generally Deneui, 775 N.W.2d 221; Hand, 946 N.E. 2d 537; Pinkard, 785 N.W.2d 592; Stanley, 2014 Ohio App. LEXIS 5451; Taylor, 2009 U.S. Dist. LEXIS 95555; see also Ferreira v. City of E. Providence, 568 F. Supp. 2d 197 (D.R.I. 2008) (seizure of defendant was justified and reasonable under community caretaking function.). It is submitted that the reasoning of these courts is consistent with this Circuit's view of the community caretaking function.

This Circuit analyzes the community caretaking function in a similar manner as reflected in the cases above. Thus, in order to apply the community caretaking function, a court must first determine whether the function performed by the officer falls within the heartland of the community caretaking function. Matalon, 806 F.3d 627. Here, it is incontrovertible that the CPD arrived at the Caniglia residence as a result of a "wellness check" – a call to assist a suicidal individual – and not to investigate any type of crime. A police officer's response to an attempted suicide

call is certainly part of that officer's community caretaking function. The function that the CPD performed at the Caniglia residence was within the heartland of the community caretaking function and did not involve any type of criminal investigation. Id. Thus, the final and ultimate inquiry for the court is to determine whether, under the circumstances, the CPD "acted within the realm of reason." Lockhart-Bembery, 498 F.3d at 75 (internal quotation marks omitted). In community caretaking circumstances, reasonableness can take on many forms and is flexible; thus, what may be "reasonable in one type of situation may not be reasonable in another." Rodriguez-Morales, 929 F.2d at 785 (internal quotation marks omitted). Courts must evaluate the totality of the circumstances. Id. In recognizing the import of the protections of the Fourth Amendment, the totality analysis certainly includes a determination concerning whether the public interest at stake outweighs the intrusion upon the privacy of the individual such that the exercise of the community caretaking function was reasonable. See generally MacDonald v. Town of Eastham, 745 F.3d 8, 13 (1st Cir. 2014) (invocation of community caretaking function must be reasonable); see also Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Jesus, 634 F.3d 3, 16 (1st Cir. 2011) (where purpose is other than detecting evidence of criminal wrongdoing, courts weigh the gravity of the public concerns served by seizure, degree to which seizure advances public interest, and the severity of the interference with individual liberty).

In applying the third and final Pinkard factor to the facts of this case, the public interest outweighs Appellant's privacy interest. Appellees seized the guns to "prevent potential hazards from materializing." Rodriguez-Morales, 929 F.2d at 784. The CPD was presented with a situation where (1) Appellant and his wife had engaged in an argument over a coffee mug; (2) Appellant had taken out a gun and implored his wife to shoot him; (3) Appellant's wife left the residence and stayed at a motel overnight; (4) Appellant's wife contacted police and expressed her concern that Appellant was depressed and would harm himself or commit suicide; (5) Appellant informed the CPD that he was "sick of the arguments" between him and Mrs. Caniglia and "couldn't take it anymore"; (6) Appellant had ready access to a firearm and ammunition; and (7) Appellant was upset and agitated because his wife had contacted police. Appellees could not rule out that Appellant would use the guns to harm himself, Mrs. Caniglia, or another individual. See generally Sutterfield, 751 F.3d at 570.

"Threats of suicide must be taken seriously, and the danger is not necessarily dissipated by the apparent subsidence of the threat – for example, such persons can and do paper over the problem by feigning calmness, only to return to that dangerous mindset when another stressor arises." Bloom v. Palos Heights Police Dep't, 840 F. Supp. 2d 1059, 1068 n.7 (N.D. Ill. 2012); see also Dane Cty. v. Quisling, No. 2013AP2743, 2014 Wisc. App. LEXIS 855, at *9 (Oct. 16, 2014) (a suicidal

individual denying that he is suicidal "could be seen, given the totality of the circumstances, as just an effort to push off police officers so he could do something potentially fatal to himself and other people as well"). Officer Mastrati was convinced that a "normal" person would not take a gun out and implore a spouse to end his life. A27. Officer Mastrati believed that Appellant was a danger to himself. Id. Sgt. Barth believed that Appellant made a suicidal statement. Id. Captain Henry determined that if they had left the guns at the residence with Appellant, Appellant could be in danger, Mrs. Caniglia could be in danger, and anybody else that came into contact with Appellant could be in danger. Id. Appellees could not have known when Appellant would return to the residence, or whether he would use the guns to harm himself, his wife or another individual. See generally Sutterfield, 751 F.3d at 570. "[P]olice officers providing assistance at the scene of a threatened suicide must concern themselves with more than simply the safety of the suicidal person. Protection of the physical safety of the police officers and other third parties is paramount." Adams v. City of Fremont, 80 Cal. Rptr. 2d 196, 213 (Cal. Ct. App. 1998); see also United States v. Johnson, No. 4:18CR00151 ERW, 2018 U.S. Dist. LEXIS 190983 (E.D. Mo. Nov. 8, 2018) (seizure of gun lawful under community caretaking function).

This matter is akin to Sutterfield. In both Sutterfield and this matter, individuals made suicidal statements. Sutterfield, 751 F.3d at 545; A23-A26. In this

matter, unlike Sutterfield, Appellant actually brandished a weapon. The court in Sutterfield determined that the community caretaking function was the "best fit" for the case – as it is in this matter. 751 F.3d at 551.

> There may have been alternatives, but removing and securing the firearm was an obvious and reasonable measure. One need only imagine the public outcry that would have taken place had the police left the gun where it was and had [Appellant] . . . then used the gun to take [his] own life, or [that of another], to see the wisdom in what police did.

Sutterfield, 751 F.3d at 570 (emphasis added); see also Mora v. City of Gaithersburg, 519 F.3d 216, 227 (4th Cir. 2008) ("[t]here are no shortage of precedents approving preventive seizures for the sake of public safety").

The same concerns justified the CPD's seizure of Appellant himself. Officer Mastrati believed that Appellant was a threat to himself and that his behavior the previous day was not "normal." A27. Captain Henry likewise believed that Appellant was at risk of harming himself, and Sgt. Barth believed that Appellant's statement to his wife was suicidal. Thus, just as Appellees seized Appellant's firearms to protect Mrs. Caniglia and anyone else that could possibly come into contact with Appellant, they seized Appellant to protect him from himself.[4] In doing

[4] Appellant points to Dr. Berman's opinion that Appellant was "neither at acute nor imminent risk of suicide on August 20 and 21, 2015." Appellant's Brief at 18. Dr. Berman's report, however, is unsworn, and is therefore inadmissible hearsay. Casillas v. Vida, No. 16-2564 (PAD), 2018 U.S. Dist. LEXIS 144729 (D.P.R. Aug. 23, 2018) ("[W]ithout proper authentication, plaintiffs' expert reports constitute inadmissible hearsay that cannot be relied upon in support of a motion for summary

so, the CPD did not completely put their faith in any one individual or statement, "deferring instead to mental health professionals at the [h]ospital." Bloom, 840 F. Supp. 2d at 1068. Deferring to mental health professionals is reasonable in instances of threats of suicide. See generally id. The CPD had reason to believe that Appellant had threatened to harm himself, and they

> acted reasonably under the circumstances by turning to professionals, rather than forming their own lay opinions about [his] mental health. Consider for a moment the possible consequences of the [o]fficer acting solely on their own lay opinions and leaving the scene. Had [Appellant] actually been suicidal, such conduct by the [o]fficers would have created a risk to [his] life. Briefly seizing [him] and bringing [him] in for an expert evaluation was reasonable in light of the potential risk.

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judgment."); Prudential Ins. Co. v. Textron Aviation Inc., No. 16-2380-DDC-JPO, 2018 U.S. Dist. LEXIS 71019 (D. Kan. Apr. 27, 2018) (quoting Ho v. Michelin N. Am., Inc., No. 08-1282-JTM, 2011 U.S. Dist. LEXIS 83127, at *13 (D. Kan. July 29, 2011)) ("'[W]hen tested at summary judgment, the proponent of expert testimony may not simply present the unsworn report of the proposed expert' because it is inadmissible hearsay."). Appellees also submit that the report, which comprises the opinion of a trained psychologist and accounts for facts not known to the police officers present at the scene, is irrelevant as to whether those officers had probable cause to seize Appellant for a mental health evaluation. Gargano v. Belmont Police Dep't, 476 F. Supp. 2d 39 (D. Mass. 2007) (probable cause is not vitiated by when the basis of which police officer is shown after the fact to have been erroneous – probable cause is determined at the moment of the seizure); United States v. Acevedo-Vazquez, No. 16-642, 2018 U.S. Dist. LEXIS 168386 (D.P.R. Sept. 27, 2018) (probable cause focuses on the collective knowledge of all officers at the time of the event and considers the totality of the circumstances). Appellees made these same objections concerning Dr. Berman's purported testimony before the District Court. Appellant, however, failed to respond to Appellees' objections. As a result, Appellant cannot now assert Dr. Berman's testimony before this Court.

Id. at 1068-69; see also Hall v. Fremont, 520 F. App'x 609, 611 (9th Cir. 2013) ("[w]e are aware of no case that would preclude a reasonable officer from believing there was probable cause to detain a person who alluded to committing suicide"); Cantrell v. City of Murphy, 666 F.3d 911 (5th Cir. 2012) (suicidal statements could have given a reasonable police officer sufficient basis to believe that individual was a danger to herself).

When the officers responded to the Caniglia residence, they faced a depressed man who had asked his wife to end his life. That same man had ready access to a gun and ammunition inside the house and was upset and agitated that his wife had decided to involve the police. In this instance, the public interest, including the safety and protection of the life of Appellant, Mrs. Caniglia, and members of the public, outweighed the intrusion of Appellant's privacy interests. Under the particular circumstances faced by the CPD, it was objectively reasonable to temporarily remove Appellant and the weapons from the house pursuant to the flexible community caretaking function. See Lockhart-Bembery, 498 F.3d at 75.

In addition, the District Court found that there was insufficient evidence in the record to support any claim of bodily seizure. Apparently, the court found that

voluntary compliance, not coercion, most accurately described Appellant's transport to the hospital. See United States v. Smith, 423 F.3d 25, 28 (1st Cir. 2005). [5]

III. THE DISTRICT COURT PROPERLY HELD THAT THE INDIVIDUAL APPELLEES ARE ENTITLED TO QUALIFIED IMMUNITY.

If the Court determines that the community caretaking function does not apply in this situation, it is submitted that the individual Appellees are entitled to qualified immunity. The First Circuit applies a two-part test to analyze the question of qualified immunity. Maldonado v. Fontanes, 568 F.3d 263, 268-69 (1st Cir. 2009). The court must decide "(1) whether the facts alleged or shown by the plaintiff make out a violation of a constitutional right; and (2) if so, whether the right was clearly established at the time of the defendant's alleged violation." Id. at 269 (internal quotation marks omitted). Courts may consider the prongs in any order. MacDonald, 745 F.3d at 12.

The clearly established prong has two inquiries. Id. The first concentrates on the clarity of the law at the time of the alleged violation and "turns on whether the

[5] Appellant also argues that Appellees may not invoke the community caretaking function because there is no specific CPD general order outlining the function. However, there is no legal requirement that a police department's policies and procedures must apply to every conceivable and foreseeable situation that a police officer may face. Rodriguez-Morales, 929 F.2d at 787. Police officers must be "free to follow 'sound police procedure'" – that is, "to choose freely among the available options, so long as the option chosen is within the universe of reasonable choices." Id. Where police have "solid, noninvestigatory reasons" for exercising their community caretaking function, "there is no need for them to show that they followed explicit criteria . . . as long as the decision was reasonable." Id.

contours of the relevant right were clear enough to signal to a reasonable official that his conduct would infringe that right." Id. The second "turns on whether a reasonable defendant would have understood that his conduct violated the plaintiff['s] constitutional rights." Id. (internal quotation marks omitted). The decisive question becomes whether an objectively reasonable police officer, standing in the shoes of these Appellees in this situation, would have concluded that his or her actions violated a clearly established statutory or constitutional right. Ricci v. Urso, 974 F.2d 5, 7 (1st Cir. 1992). A "reasonable, although mistaken, conclusion about the lawfulness of one's conduct does not subject a government official to personal liability." Cookish v. Powell, 945 F.2d 441, 443 (1st Cir. 1991).

> The analysis on whether a right is "clearly established" must be very narrow.
>
> > We have repeatedly told courts . . . not to define clearly established law at a high level of generality. The dispositive question is whether the violative nature of particular conduct is clearly established. This inquiry must be undertaken in light of the specific context of the case, not as a broad general proposition. Such specificity is especially important in the Fourth Amendment context, where the Court has recognized that it is sometimes difficult for an officer to determine how the relevant legal doctrine . . . will apply to the factual situation the officer confronts.

Mullenix v. Luna, 136 S. Ct. 305, 308 (2015) (emphasis in original and added) (internal citations and quotation marks omitted). Appellant bears the "heavy" burden of showing that the law was clearly established at the time of the alleged

violation. Mitchell v. Miller, 790 F.3d 73, 77 (1st Cir. 2015). To meet his burden, Appellant must

> identify controlling authority or a robust consensus of persuasive authority such that any reasonable official in the defendant's position would have known that the challenged conduct is illegal in the particular circumstances that he or she faced -- then existing precedent, in other words, must have placed the statutory or constitutional question beyond debate.

Rivera-Corraliza v. Puig-Morales, 794 F.3d 208, 214-15 (1st Cir. 2015) (emphasis added) (internal quotation marks omitted). "[Q]ualified immunity . . . gives ample room for mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate the law." Rivera v. Murphy, 979 F.2d 259, 263 (1st Cir. 1992) (internal quotation marks and citation omitted).

Police officers are not liable for bad guesses in gray areas; they are liable for transgressing bright lines. Rivera-Corraliza, 794 F.3d at 215. First, as the District Court noted, some 4 years after the incident, there is a split among the federal circuits concerning whether the community caretaking function applies outside of the automobile context. Caniglia v. Strom, No. 15-525-JJM-LDA, 2019 U.S. Dist. LEXIS 95400, at *10 n.3 (D.R.I. June 4, 2019); see also MacDonald, 745 F.3d at 13 (noting the federal circuit split and the split among state appellate courts).[6] The Court need look no further than MacDonald, to confirm that the "reach of the

[6] Appellees could only identify two cases from the Rhode Island Supreme Court even mentioning the community caretaking function.

community caretaking doctrine is poorly defined outside of the motor vehicle milieu." 745 F.3d at 13. Moreover, questions concerning the application of the function are complicated because courts conflate the community caretaking function with other exceptions to the warrant requirement. Id. In fact, the MacDonald court concluded that "[g]iven the profusion of cases pointing in different directions, it is apparent that the scope and boundaries of the community caretaking exception are nebulous." Id. at 13. There is no bright line in this area. Officers who encounter a perceived suicidal individual in the possession of weapons must make on-the-spot judgment calls with very little legal guidance.

In the final analysis, what occurred in this matter is clear; Appellees removed weapons from a suicidal individual's home and ensured he received the proper medical attention. Specifically, Appellees were presented with a mental health situation with a number of potentially explosive outcomes. See section II C, supra, at 26-27. "[G]iven the parade of horribles that could easily be imagined had the officers simply turned tail, a plausible argument can be made that the officers' actions [in seizing the Appellant and his weapons] were reasonable under the circumstances." MacDonald, 745 F.3d at 14. In the final analysis, "neither the general dimensions of the community caretaking exception nor the case law addressing the application of that exception provides the sort of red flag that would

have semaphored to reasonable police officers" that their conduct was illegal. Id. at 15.

On the contrary, convincing authority compels the conclusion that the individual Appellees are entitled to qualified immunity. "[W]here the purpose [of a police officer] is to render solicited aid in an emergency rather than to enforce the law, punish, deter, or incarcerate there is no clearly established constitutional liability under the Fourth Amendment." Estate of Barnwell v. Grisby, 681 F. App'x 435, 440 (6th Cir. 2017) (internal quotation marks omitted); see also Sutterfield, 751 F.3d at 551 (noting the "lack of clarity" in Fourth Amendment case law as to the appropriate legal framework that should be applied to warrantless intrusions motivated by purposes other than law enforcement evidence-gathering). Both Sutterfield and Arden held that individual officers were entitled to qualified immunity when seizing firearms from suicidal individuals during a police welfare check. Sutterfield, 751 F.3d at 572-79; Arden, 622 F. App'x at 710-11 (finding no authority clearly establishing that firearms may not be constitutionally removed from the house of a suicidal homeowner).[7] It is not clearly established that the community

[7] Appellant contends that Appellees did not have probable cause to believe that he was an imminent threat to himself when they responded to his home on August 21, 2015, and that Appellees had "genuine uncertainty" about the state of the law at the time. Appellant's Brief at 53. Appellant specifically points to Sgt. Barth, who was unaware of the "community care doctrine" until he prepared for his deposition in connection with this matter. Id. at 27. However, "an officer's subjective belief is not dispositive of whether probable cause existed." Estrada v. Rhode Island, 594

caretaking function does not apply to the police activity in Appellant's home. That police activity was intended to protect Appellant, Mrs. Caniglia and the general public. The Appellees acted eminently reasonable under the circumstances. As a result, it is submitted that the individual Appellees are entitled to qualified immunity.

IV. THE DISTRICT COURT PROPERLY HELD THAT APPELLEES DID NOT VIOLATE APPELLANT'S RIGHTS UNDER THE RHODE ISLAND FIREARMS ACT.

A. THE RHODE ISLAND FIREARMS ACT DOES NOT APPLY TO APPELLANT'S CLAIM.

Appellant argues that Appellees violated the RIFA, R.I. Gen. Laws § 11-47-1 et seq., which provides certain requirements for confiscating weapons. Specifically, he contends that the RIFA did not authorize Appellees to seize his firearms without either a court order or exigent circumstances. Appellant's Brief at 41. Appellant, however, recognizes that the RIFA does not provide for a private right of action and therefore attempts to bring a claim pursuant to R.I. Gen. Laws § 9-1-2.[8] Id. at 45.

First, nothing in the RIFA "shall be construed to reduce or limit any existing right to purchase and own firearms . . . or to provide authority to any state or local

F.3d 56, 65 (1st Cir. 2010) (quoting United States v. Pardue, 385 F.3d 101, 106 n.2 (1st Cir. 2004)). In fact, "[e]vidence concerning the officer's subjective intent is simply irrelevant to a qualified immunity defense." Abreu-Guzman v. Ford, 241 F.3d 69, 73 (1st Cir. 2001) (internal quotation marks and citation omitted).

[8] R.I. Gen. Laws § 9-1-2 provides that a victim of a crime may bring a civil cause of action against the offender.

agency to infringe upon the privacy of any family, home or business except by lawful warrant." R.I. Gen. Laws § 11-47-60.1(a) (emphasis added). As noted above, Appellants seized the weapons pursuant to the community caretaking function, and thus did not violate the RIFA.

Moreover, the RIFA "only contemplates injunctive relief, and not damages." Richer v. Parmelee, 189 F. Supp. 3d 334, 343 (D.R.I. 2016). It is undisputed that Appellees returned Appellant's guns to him in December 2015. A28. Because Appellees returned Appellant's guns to him, the RIFA is "no longer any help to" him. Richer, 189 F. Supp. 3d at 343. Appellant cannot "circumvent" the limited relief contemplated by the RIFA by "recasting his claim as arising under [R.I. Gen. Laws] § 9-1-2." Id. at 343 n.14. The RIFA, therefore, is inapplicable in this matter.

B. Even if the RIFA Applied, Appellant's Claim Against the City Fails as a Matter of Law Because the City Cannot Commit a Crime.

Moreover, even if the RIFA applied, any claim against the City must fail.[9] R.I. General Laws § 9-1-2 provides that when a person suffers "any injury to his person, reputation, or estate by reason of the commission of any crime or offense,

[9] Furthermore, with respect to the individual Appellees, § 9-1-2 provides that the alleged crime victim may recover his or her alleged damages in a "civil action against the offender . . . ." R.I. Gen. Laws § 9-1-2 (emphasis added). In any civil action, however, no individual defendant can be held liable to a third party for any acts performed within the scope of his employment. Kennet v. Marquis, 798 A.2d 416, 418 (R.I. 2002) (it "has long been settled that an agent acting on behalf of a disclosed principal is not personally liable to a third party for acts performed within the scope of his authority").

he or she may recover his or her damages for the injury in a civil action against the offender." R.I. Gen. Laws § 9-1-2 (emphasis added). Section 9-1-2 is an enabling act that allows a person allegedly injured as a result of a crime "a right of action where none existed at common law." Mello v. DaLomba, 798 A.2d 405, 411 (R.I. 2002). "Section 9-1-2 creates a new right of action in that a victim can bring an action for damages for injuries even if no criminal complaint for the crime or offense has been filed." Lyons v. Town of Scituate, 554 A.2d 1034, 1036 (R.I. 1989). To establish liability against the City under § 9-1-2, Appellant must "first establish" that the City engaged in "criminal activity." Zarrella v. Minn. Mut. Life Ins. Co., 824 A.2d 1249, 1261 (R.I. 2003) (emphasis added); see also Willis v. Omar, 954 A.2d 126, 131 (R.I. 2008) (section 9-1-2 "imposes civil liability for injuries resulting from a criminal act").

"[M]unicipal corporations can not . . . do a criminal act or a willful and malicious wrong . . . ." City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 261 (1981) (municipality immune from punitive damages pursuant to § 1983); see also Graff v. Motta, 695 A.2d 486, 490 (R.I. 1997) (award of punitive damages against a municipality is against public policy); Forest v. Pawtucket Police Dep't, 290 F. Supp. 2d 215, 234 (D.R.I. 2003) (punitive damages are awarded where there is evidence of behavior amounting to criminality; punitive damages award against municipality contrary to public policy). "[T]he criminal intent of an agent of a

municipal corporation cannot be imputed to the municipal corporation itself because the retribution for such a wrong should not be visited upon the shoulders of blameless or unknowing taxpayers." Bonsall Vill., Inc. v. Patterson, No. 90-0457, 1990 U.S. Dist. LEXIS 12530, at *19 (E.D. Pa. Sept. 19, 1990) (internal quotation marks omitted); see also Ball v. City of Indianapolis, 760 F.3d 636, 646 (7th Cir. 2014) ("[b]ecause a crime is an offense against the sovereign, it is axiomatic that the sovereign cannot commit a crime"); Nu-Life Constr. Corp. v. Bd. of Educ., 779 F. Supp. 248, 251 (E.D.N.Y. 1991) (the "criminal intent of municipal agents cannot be imputed to the municipality itself by reason of respondeat superior").

In State v. Ziliak, 464 N.E.2d 929, 930 (Ind. Ct. App. 1984), employees of the state of Indiana removed certain Indian artifacts from the plaintiffs' land without consent. The acts of the state employees violated three Indiana criminal statutes. Id. The plaintiffs sued the state for damages and sought certain remedies provided for in Ind. Code § 34-4-30-1. Id. Ind. Code § 34-4-30-1 is a "statute enacted to provide additional civil remedies to crime victims . . . ." Id. (emphasis added). Consistent with R.I. Gen. Laws § 9-1-2, in order to recover under Ind. Code § 34-4-30, it was not necessary for a plaintiff to show a conviction, rather "recovery may be had so long as the actions of the perpetrator amounted to a violation of the prescribed Indiana Code sections." Id. Furthermore, also consistent with R.I. Gen. Laws § 9-1-2, in order to recover under Ind. Code § 34-4-30-1, a plaintiff must prove a

violation of the Indiana criminal code by a preponderance of the evidence. Id. Lastly, again like § 9-1-2, "although it is not necessary to show a conviction, the party seeking recovery under Ind. Code. Sec. 34-4-30-1 must prove commission of the crime." Id. The Ziliak court held that because a crime is an offense against the sovereign, it was self-evident that the sovereign could not commit a crime. Id. at 930. The Ziliak court concluded that the state could not commit the "criminal act prerequisite to bringing the case within the terms of Ind. Code § 34-4-30-1. . . ." Id. at 931.

In order to recover against the City pursuant to § 9-1-2, Appellant must show that the City committed a criminal act. Zarrella, 824 A.2d 1249; Willis, 954 A.2d 126. A municipality, however, cannot commit a criminal act. City of Newport, 453 U.S. 247; Ball, 760 F.3d 636; Bonsall Vill., 1990 U.S. Dist. LEXIS 12530; Nu-Life Constr. Corp., 779 F. Supp. 248; Ziliak, 464 N.E.2d at 931. Consequently, even if the RIFA applied, Appellant cannot show that the City committed the criminal act prerequisite to bring this matter within the terms of R.I. Gen. Laws § 9-1-2. See generally Ziliak, 464 N.E. 2d at 931.

V. THE DISTRICT COURT PROPERLY HELD THAT APPELLEES DID NOT VIOLATE APPELLANT'S RIGHT TO KEEP ARMS IN HIS HOME UNDER EITHER THE SECOND AMENDMENT OR THE RHODE ISLAND CONSTITUTION.

Appellant argues that Appellees violated his right to keep arms. Appellant submits that Appellees violated his rights pursuant to the Second Amendment to the

United States Constitution and Article 1, Section 22 of the Rhode Island Constitution. He alleges that by engaging in a "specific effort to deprive [him] from keeping . . . guns in his home without a legitimate basis," Appellees have violated Appellant's right to keep and bear arms. Appellant's Brief at 44.

The Second Amendment provides that a "well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. Although the Second Amendment confers an individual right to keep and bear arms, that right is not unlimited. Dist. of Columbia v. Heller, 554 U.S. 570, 595 (2008). The right granted by the Second Amendment does not include the right to "keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." Id. at 626.

"Whether and to what extent the Second Amendment protects an individual's right to possess a particular gun . . . is an issue just beginning to receive judicial attention." Sutterfield, 751 F.3d at 571. Courts have held that the Second Amendment is not implicated by the seizure of a particular individual firearm. Hopkins v. Claroni, Civil No. 1:13-CV-229-DBH, 2015 U.S. Dist. LEXIS 64530 (D. Me. May 18, 2015) ("there is no Second Amendment right presented by the seizure of a particular firearm"); Fairbanks v. O'Hagan, 255 F. Supp. 3d 239, 245 (D. Mass. 2017) (the "Second Amendment is not implicated by the seizure of individual firearms"). The right to bear arms is not a right to "hold some particular gun." Vaher

v. Town of Orangetown, 916 F. Supp. 2d 404 (S.D.N.Y. 2013) (internal quotation marks omitted); Garcha v. City of Beacon, 351 F. Supp. 2d 213, 217 (S.D.N.Y. 2005) (the right to bear arms is not a right to some particular gun). "[W]here a plaintiff's ability to acquire other firearms has not been abridged, a Second Amendment violation has not occurred even despite a seizure of a plaintiff's particular firearm." Doutel v. City of Norwalk, No. 3:11-CV-01164, 2013 U.S. Dist. Lexis 93436, at *79 (D. Conn. July 3, 2013) (emphasis in original); Tirado v. Cruz, No. 10-2248, 2012 U.S. Dist. LEXIS 19978, at *17 (D.P.R. Feb. 16, 2012) (finding that Heller held that in order to show a Second Amendment violation, a plaintiff must do more than show he was deprived from possessing one particular firearm, rather "plaintiff must show that he has been kept from acquiring any other legal firearm"); Fairbanks, 255 F. Supp. 3d at 245 ("In order to establish a violation of the Second Amendment [Appellant] must show that he has been kept from acquiring any other legal firearms."); Richer, 189 F. Supp. 3d at 343 ("What prevents the [City and its officers] from confiscating [Appellant's] hypothetical new guns and what makes [that] conduct allegedly objectionable in this case, is [Appellant's] Fourth and Fourteenth Amendment rights to be secure in his home and possessions, not the Second Amendment").

Moreover, Appellant once again ignores the import of the community caretaking function. It is clear that the Second Amendment is not implicated when

the police seize a weapon pursuant to an arrest or at a crime scene or pursuant to a warrant. Similarly, the Second Amendment is not implicated when the police seize a weapon pursuant to the community caretaking function. Here, since the community caretaking function applies, the CPD's seizure of Appellant's weapons is deemed reasonable, and falls within those categories of seizure where the Second Amendment is not implicated.[10]

Notwithstanding that argument, however, the individual Appellees are entitled to qualified immunity on this claim. Appellees assert that not only was there no constitutional violation of the Second Amendment, but no case law as of August 2015 would have put Appellees on notice that removing a firearm from the home of a suicidal individual in exercise of a community caretaking function violates the Second Amendment. See Baskin v. City of Fort Wayne, No. 1:16-CV-180-TLS,

[10] Article 1, Section 22 of the Rhode Island Constitution provides that "[t]he right of the people to keep and bear arms shall not be infringed." R.I. Const. Art. 1, § 22. The "right to keep arms" language in the Rhode Island Constitution mirrors the language contained in the Second Amendment. The Rhode Island Supreme Court has interpreted Article 1, Section 22 to provide a similar right to keep arms as the right to keep arms recognized by the Second Amendment. See generally Mosby v. Devine, 851 A.2d 1031 (R.I. 2004). It is therefore submitted that Appellees' Second Amendment argument would be equally dispositive of Appellant's claim pursuant to Article 1, Section 22.

2017 U.S. Dist. LEXIS 174650, at *6-7 (N.D. Ind. Oct. 20, 2017); Brown v. Zydek, No. 15 C 1044, 2016 U.S. Dist. LEXIS 108207, at *10-12 (N.D. Ill. Aug. 16, 2016).[11]

VI. THE DISTRICT COURT PROPERLY HELD THAT APPELLEES DID NOT VIOLATE APPELLANT'S RIGHTS UNDER THE RHODE ISLAND MENTAL HEALTH LAW.

Appellant argues that Appellees violated the RIMHL, R.I. Gen. Laws § 40.1-5-1 et seq. He submits that Appellees did not obtain certification from a physician that Appellant was in need of immediate care and treatment or make an application for emergency certification of Appellant to a mental health facility. See Appellant's Brief at 36; R.I. Gen. Laws §§ 40.1-5-7 and 40.1-5-8.[12] Instead, Appellant contends that Appellees "compelled" him to "be transported by Cranston Rescue to Kent Hospital for an involuntary psychological evaluation . . ." Appellant's Brief at 37. As a result, Appellant submits that, by insisting that he be medically evaluated, Appellees conspired unlawfully to attempt to cause him to be admitted or certified to a medical facility. See id. Appellant concludes that, as result of this conspiracy to attempt to cause him to be admitted or certified to a medical facility, Appellees

[11] The District Court also found that "[a]n officer who is entitled to qualified immunity under federal law is similarly immune from suit for the state-law equivalent of that claim under Rhode Island law." Caniglia, 2019 U.S. Dist. LEXIS 95400, at *14 n.4 (citing Estrada, 594 F.3d at 65; Hatch v. Town of Middletown, 311 F.3d 83, 89-90 (1st Cir. 2002)). The individual Appellees are entitled to qualified immunity on the federal and state constitutional law claims.

[12] R.I. Gen. Laws § 40.1-5-7 was amended in 2017, but the amendment does not apply to this action. See 2017 R.I. Pub. Laws 389.

have violated the RIMHL and thus committed a crime. See id. Appellant, recognizing that the RIMHL does not provide him with a private right of action, again argues that R.I. Gen. Laws § 9-1-2 provides him with a private right of action. Id. at 45.

Assuming for the sake of argument that a CPD officer insisted that Appellant be transported to the hospital to be evaluated, transporting him to the hospital was more than reasonable under the circumstances. See generally Bloom, 840 F. Supp. 2d at 1068-69. Appellant presented a firearm to his wife and asked her to shoot him and Mrs. Caniglia was concerned that Appellant would harm himself or attempt suicide. Mrs. Caniglia had good reason to question Appellant's mental and emotional health.[13]

Notwithstanding the reasonableness of his transport, Appellant's argument is based upon a faulty legal foundation. As noted above, Appellant brought his claim via R.I. Gen. Laws § 9-1-2, which, as noted, provides that when a person suffers "any injury to his person, reputation, or estate by reason of the commission of any crime or offense, he or she may recover his or her damages for the injury in a civil

[13] Furthermore, the statutory scheme does not provide that violations of R.I. Gen. Laws §§ 40.1-5-7 and 40.1-5-8 are crimes. In fact, the statutory scheme specifically identifies other actions as crimes. See R.I. Gen. Laws §§ 40.1-5-19; 40.1-5-38; 40.1-5-39; 40.1-5-40.1.

action against the offender." R.I. Gen. Laws § 9-1-2 (emphasis added).[14] Appellant relies upon R.I. Gen. Laws § 40.1-5-38 for the premise that certain unnamed Appellees committed a crime. He claims that certain unnamed Appellees conspired to attempt to admit or certify him to a medical facility. Appellant's Brief at 37. R.I. Gen. Laws § 40.1-5-38 provides that any

> person who knowingly and willfully conspires with any other person unlawfully to improperly cause to be admitted or certified to any facility, any person not covered by the provisions of this chapter, shall on conviction thereof, be fined not exceeding five thousand dollars ($5,000) or imprisoned not exceeding five (5) years at the discretion of the court.

R.I. Gen. Laws § 40.1-5-38 (emphasis added). When construing a statute, the court must be guided by the plain and ordinary meaning of unambiguous language. Walden v. City of Providence, 596 F.3d 38, 59 (1st Cir. 2010). The statutory scheme prohibits "persons" from unlawfully conspiring to improperly "cause [an individual] to be admitted or certified" to a facility. R.I. Gen. Laws § 40.1-5-38 (emphasis added). It is undisputed that (1) Appellees did not make an application for a medical certification; (2) Appellees did not request that Appellant be admitted into a facility; (3) Appellees did not "cause" Appellant to be admitted; and (4) Appellant was not admitted into a facility. Thus, Appellees did not violate § 40.1-5-38.

[14] Appellees incorporate by reference their argument from section IV B above, and aver again that the City cannot commit a crime under § 9-1-2 and that the individual Appellees cannot be liable under the civil statute. See Kennet, 798 A.2d at 418.

Last, at the time of the incident, Rhode Island Gen. Laws § 40.1-5-7 provided that

> [a]ny physician, who after examining a person, has reason to believe that the person is in need of immediate care and treatment, and is one whose continued unsupervised presence in the community would create an imminent likelihood of serious harm by reason of mental disability, may apply at a facility for the emergency certification of the person thereto.
>
> . . . .
>
> In the event that no physician is available, a . . . police officer who believes the person to be in need of immediate care and treatment, and one whose continued unsupervised presence in the community would create an imminent likelihood of serious harm by reason of mental disability, may make the application for emergency certification to a facility.

R.I. Gen. Laws § 40.1-5-7(a)(1) (emphasis added). Appellant employed the term "insisted" in his Complaint and employs the term "compelled" in his brief as a means to find applicability of the Mental Health statutory scheme. No Appellee made an application for emergency certification or admission to a medical facility. Furthermore, in this instance, a physician was not available on scene. After Appellant was transported to a physician who could evaluate him, that physician examined him and determined both that Appellant was not a person in need of immediate care and treatment and that admission was not appropriate under the circumstances. Even assuming that Appellees somehow "insisted" that Appellant

be transported to the hospital for an evaluation, that "insistence" is not a violation of the statutory scheme.

CONCLUSION

For the reasons stated herein, Appellees respectfully request that this Court affirm the District Court's entry of summary judgment in their favor and deny and dismiss the instant appeal.

Respectfully submitted,
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Dated: October 23, 2019

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I hereby certify that the within document has been electronically filed with the Court on this 23rd day of October, 2019, and is available for viewing and downloading from the ECF system. The counsel of record listed below will receive notice via the ECF system:

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