IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT JANUARY TERM 2009

EMMANUEL ORTIZ,

Appellant,

v. Case No. 5D08-1653

STATE OF FLORIDA,

Appellee.

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Opinion filed April 24, 2009

Appeal from the Circuit Court
for Orange County,
Jose R. Rodriguez, Judge.

Frances Martinez, of Escobar, Ramirez & Associates, P.A., Tampa, for Appellant.

Bill McCollum, Attorney General, Tallahassee, and Mary G. Jolley, Assistant Attorney General, Daytona Beach, for Appellee.

ORFINGER, J.

Emmanuel Ortiz pled nolo contendere to trafficking in cocaine and possession of drug paraphernalia, reserving the right to appeal the denial of his dispositive motion to suppress. Ortiz argues that law enforcement's warrantless entry into his home and the subsequent seizure of cocaine and drug paraphernalia were improper. We agree and reverse.

At about 6:30 p.m. one evening, Sheriff's Deputy Herbert Mercado received a call from a local elementary school after a six-year-old child's parents failed to pick him up from the after-school program. The school's representative advised the deputy that the school had been unable to contact the child's parents by telephone. Because it was the sheriff's office's policy to take reasonable steps to contact parents before turning a child over to the Department of Children and Families, Deputy Mercado took the child to the address that the school provided as the child's home. The deputy testified that the child told him that his parents were or should be home.

When the deputy and the child arrived at the house, no one appeared to be home. No lights were on in the house, and no one answered when the child knocked on the front door. There was no car in the driveway and nothing was obviously amiss, such as a broken window or open door. The front garage door was not locked, and the child opened it with the deputy's help.[1] From inside the garage, the deputy could see a light on in the house. The child invited the deputy inside the home, saying "follow me, I'll show you my parents." The deputy and the child then entered the house in search of the parents. Nothing in the house seemed unusual. After they looked around without finding anyone, the child took the deputy to the locked door of his parents' bedroom. The deputy knocked on the bedroom door and announced his presence. There was no answer.

Concerned for the well-being of the child's parents, the deputy was able to unlock the door and enter the bedroom. Once in the bedroom, the deputy looked "for a body" on and under the bed as well as in the closet. When the deputy looked in the adjoining

[1] The deputy could not remember, but conceded that he may have helped the child lift the garage door.

bathroom, he saw what turned out to be 34 grams of cocaine wrapped in baggies on the countertop. Ortiz then entered the room. The deputy asked him if he lived in the house and if the young boy was his son. After Ortiz answered both questions affirmatively, the deputy advised him of his Miranda[2] rights. Ortiz admitted that the cocaine was his, and was subsequently arrested on several drug-related charges.

Ortiz moved to suppress the cocaine, contending that contrary to the State's position, exigent circumstances did not justify a warrantless entry into his home, and specifically, the locked bedroom. He also argued that the six-year-old child did not have the authority to consent to the warrantless entry into the house. The trial court disagreed, explaining in part:

> As far as going inside the bedroom, I think that's key here, because if -- it doesn't matter what consent may have -- given, what understanding there was by the defendant. If the officers did not have the right to be where they were, then the evidence has to be suppressed. That's why I was very clear in asking what was not clear from the questioning, whether or not -- in order to get to the bathroom where the contraband was found, whether or not the only access was through the bedroom door.
>
> You know, again, when you look at the situation that we have here, when the child is directing -- I think what's critical here, that may be missing from other cases, is that you've got the child directing the officer to the bedroom of the parents, where the parents are, or where the child believes the parents would be or might be. And I believe that where he was, under the circumstances that he was -- that he was in, the fact is also critical that there was no busting down of the door, but that a pick or a -- whatever it was, to unlock the door, was used, I think it was reasonable within the context of the facts of the entire case.

[2] Miranda v. Arizona, 384 U.S. 436 (1966).

> So I do not believe at this point, that we are within -- with the facts -- within the facts that Wheeler [v. State, 956 So. 2d 517 (Fla. 2d DCA 2007)] provides. And I do believe that this is, again, because we are dealing with a child; we are dealing with a child having the apparent authority.
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> This is not the, my child is letting a complete stranger inside the house, but my child is letting a law enforcement officer who has been verified by the school board, in whose trust, care and custody the child has been placed -- to reunite him with a parent. And I think, under the circumstances here, it is totally, completely reasonable, particularly since there was no violent -- or destruction of property to get access.
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> There is absolutely nothing but clear, unambiguous, good intentions on the part of the police officer, to make sure that a child is returned to his family. And but for the fact that these items were left in plain view, I think the officer had every reasonable expectation from our society to make sure that somebody was not, where the child indicated a parent might have been, in extremis.
>
> So, for the reasons that have been stated, I believe that the officer acted reasonably and that this was not an unwarranted search or seizure of either the property or the -- the search of the property or seizure of contraband. The motion, at this time, is denied for the reasons stated.

Ortiz then entered a plea of nolo contendere to trafficking in cocaine and possession of drug paraphernalia, expressly reserving his right to appeal the denial of his dispositive motion to suppress evidence.

Review of a motion to suppress is a mixed question of law and fact. The standard of review applicable to the factual findings is whether competent substantial evidence supports those findings. The standard of review applicable to the trial court's application of the law to the factual findings is de novo. Tyson v. State, 922 So. 2d 338, 339 (Fla. 5th DCA 2006) (citing McMaster v. State, 780 So. 2d 1026, 1028 (Fla. 5th DCA 2001)).

A warrantless search of a home is per se unreasonable, and thus, unconstitutional under the Fourth Amendment. Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971). However, one of the recognized exceptions to the warrant requirement exists when law enforcement is confronted with exigent circumstances. In Riggs v. State, 918 So. 2d 274, 278-79 (Fla. 2005), the Florida Supreme Court thoroughly explained the warrant requirement and the exigent circumstances exception, observing:

> The United States Supreme Court has repeatedly identified "physical entry of the home [as] the chief evil against which the wording of the Fourth Amendment is directed." Payton v. New York, 445 U.S. 573, 585, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980) (quoting United States v. United States District Court, 407 U.S. 297, 313, 92 S. Ct. 2125, 32 L. Ed. 2d 752 (1972)). Throughout the Supreme Court's caselaw, "the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." Id. at 590, 100 S. Ct. 1371. As the preceding sentence suggests, however, a well-established exception exists for "the sort of emergency or dangerous situation, described in our cases as 'exigent circumstances,' that would justify a warrantless entry into a home for the purpose of either arrest or search." Id. at 583, 100 S.Ct. 1371.
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> When the government invokes this exception to support the warrantless entry of a home, it must rebut the presumption that such entries are unreasonable. See Welsh v. Wisconsin, 466 U.S. 740, 750, 104 S. Ct. 2091, 80 L. Ed. 2d 732 (1984). To do so, it must demonstrate a "grave emergency" that "makes a warrantless search imperative to the safety of the police and of the community." Illinois v. Rodriguez, 497 U.S. 177, 191, 110 S. Ct. 2793, 111 L. Ed. 2d 148 (1990). An entry is considered "imperative" when the government can show a "compelling need for official action and no time to secure a warrant." Michigan v. Tyler, 436 U.S. 499, 509, 98 S. Ct. 1942, 56 L. Ed. 2d 486 (1978). As is often the case under the Fourth Amendment, "[t]he reasonableness of an entry by the police upon private property is measured by the

> totality of existing circumstances." Zeigler v. State, 402 So. 2d 365, 371 (Fla. 1981).
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> The circumstances in which the Supreme Court has applied the exigent circumstances exception are "few in number and carefully delineated." U.S. District Court, 407 U.S. at 318, 92 S. Ct. 2125. They include pursuing a fleeing felon, Warden v. Hayden, 387 U.S. 294, 298-99, 87 S. Ct. 1642, 18 L. Ed. 2d 782 (1967), preventing the destruction of evidence, Schmerber v. California, 384 U.S. 757, 770-71, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966), searching incident to a lawful arrest, Chimel v. California, 395 U.S. 752, 762-63, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969), and fighting fires, Tyler, 436 U.S. at 509, 98 S. Ct. 1942. Outside of those established categories, the Supreme Court "has often heard, and steadfastly rejected, the invitation to carve out further exceptions to the warrant requirement for searches of the home." Rodriguez, 497 U.S. at 192, 110 S. Ct. 2793.
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> In other words, where safety is threatened and time is of the essence, we have recognized that "the need to protect life and to prevent serious bodily injury provides justification for an otherwise invalid entry," citing Arango v. State, 411 So. 2d 172, 174 (Fla. 1982).

In Riggs, the supreme court applied the exigency exception in a situation where a child was found wandering naked and alone in the early morning hours in an apartment complex parking lot. The court concluded that the officers were reasonable in their belief that the child's caretaker was in need of medical attention and in relying on strong circumstantial evidence in their decision to enter the defendant's apartment.[3] In discussing its previous decisions concerning the exigency exception, the court

[3] The Riggs court disapproved the majority opinion in Eason v. State, 546 So. 2d 57 (Fla. 1st DCA 1989), where, on similar facts, the First District, over the dissent of Chief Judge Smith, found an entry violated the Fourth Amendment. The Riggs court noted that in Eason, the young boy actually led the police to a particular apartment and said "Mommy's in there," a fact that may strengthen the validity of an ensuing entry based on suspicion of a medical emergency.

confirmed that "authorities may enter a private dwelling based on a reasonable fear of a medical emergency."[4] Id. at 281. The court noted that "[i]n those limited circumstances, the sanctity of human life becomes more important than the sanctity of the home." Id. In doing so, the court rejected the contention that the deputies should have simply walked away from the open door, stating "[g]iven their reasonable fear of a medical emergency, the deputies did not have time to retreat and weigh their options." Id. at 282. The court added:

> As the First Circuit recently explained, officers fearing emergencies often "need [to make] an on-the-spot judgment based on incomplete information and sometimes ambiguous facts bearing upon the potential for serious consequences." See United States v. Martins, 413 F.3d 139, 147 (1st Cir. 2005), cert. denied, 546 U.S. 1011, 126 S.Ct. 644, 163 L.Ed.2d 520 (2005). The deputies in this case made precisely such a judgment. The resulting invasion of privacy is one that prudent, law-abiding citizens can accept as the fair and necessary price of having the police available as a safety net in emergencies.

Id. at 282-83.

The State maintains, and the dissent agrees, that Fourth Amendment jurisprudence, and Riggs in particular, support the trial court's conclusion that the deputy acted reasonably in entering Ortiz's home without a warrant. However, unlike in Riggs, here, the State offered no evidence to demonstrate a reasonable belief that the

[4] Medical emergencies provide one of the more settled instances for invocation of the exigent circumstances exception to the warrant requirement. See, e.g., Hornblower v. State, 351 So. 2d 716 (Fla. 1977) (explaining that "'emergency exception' permits police to enter and investigate private premises to preserve life . . . or render first aid, provided they do not enter with an accompanying intent either to arrest or search"). It is immaterial whether an actual medical emergency existed; rather, the test is whether police "reasonably believed an emergency existed at the time of the warrantless entry." Eastes v. State, 960 So. 2d 873, 875 (Fla. 5th DCA 2007).

child's parents were: (a) inside the house and (b) might be in need of medical attention. When the deputy and child arrived at the house, there were no indications of foul play and no car in the driveway. The deputy testified that he only became concerned for the well-being of the child's parents after he entered the house and found the locked master bedroom. The evidence in this case simply does not rise to the level found in Riggs.

The conclusion that the State did not establish that exigent circumstances existed justifying the warrantless entry into the residence does not detract from the trial court's finding that the deputy's actions were well intended to safely return the child to his family. However, "good intentions" do not control a determination of whether exigent circumstances exist to justify law enforcement's warrantless entry into a home. The test for such a determination is an objective one, not a subjective one. See Rolling v. State, 695 So. 2d 278, 293-94 (Fla. 1997) (holding that to permit warrantless entry into home in emergency, objectively reasonable circumstances must exist that provide basis for officer to believe there is immediate need for police assistance for protection of life). Here, with no reasonable basis to believe the parents were in the home, let alone in need of assistance, there was no exigency demonstrated justifying the entry.

Wheeler v. State, 956 So. 2d 517 (Fla. 2d DCA 2007), provides a good illustration of the limits of exigent circumstances. In that case, Wheeler moved to suppress evidence found inside his home, alleging an illegal search and seizure. The testimony at the suppression hearing established that three sheriff's deputies received a dispatch about a fight in progress at a Lakeland residence. The only information given was that a man was battering a woman in the driveway of the house. As the deputies

arrived, a second dispatch advised that the alleged batterer had gone inside the house. No further information was provided.

Upon their arrival, two deputies questioned a man working on a car in the driveway. The man denied any knowledge of a fight, but indicated there were people inside the house. The third deputy spoke to an unidentified man at the house next door, who denied seeing anything related to a fight. Two deputies went to the home, and spoke to Wheeler, who answered the door and stepped outside. He denied any knowledge of a fight and stepped back inside the house. Without consent, the deputies entered Wheeler's home and found drugs. In denying the motion to suppress, the trial court concluded that Wheeler fled back inside the house after refusing to cooperate, and the officers, fearing the victim might have been hurt and held against her will inside, were justified under the exigent circumstances doctrine to enter and search Wheeler's home.

The Second District reversed, holding that the State failed to demonstrate that the deputies had a reasonable basis to believe a grave emergency existed that made it imperative that they enter the house without a warrant. The court's majority noted that the deputies did not have a description of the person involved in the battery or that anyone had been injured, and did not find anything to corroborate the battery report when they arrived at the residence. The majority continued:

> To affirm on these facts would, in essence, constitute our adoption of a per se exception to the warrant requirement. That is, upon receiving any anonymous call reporting an alleged battery, the police could--without further corroboration--make a warrantless entry into a closed residence without the owner's permission. We find no basis for such a ruling in the law of Florida or in the decisional law of the United States Supreme Court. In fact, the cases in

> which the courts have found that such an emergency did exist to justify warrantless entry into a private residence all identify something law enforcement observed or learned at the scene that demonstrated the existence of such a grave emergency. See Seibert [v. State], 923 So. 2d [460] at 469 [(Fla. 2006)], and cases cited therein. The lack of such additional factual information here leads us to conclude that the trial court erred in denying the motion to suppress based on the existence of an exigent circumstance.

956 So. 2d at 521-22. Likewise, in this case, "good intentions" notwithstanding, the deputy lacked a reasonable basis to believe that a grave emergency existed that made it imperative that he enter the house without a warrant.[5]

In denying Ortiz's motion to suppress, the trial court also concluded that the six-year-old child had the apparent authority to allow the deputy access to the home. It is well settled that "[i]n the absence of a warrant or exigent circumstances justifying a search, the State has the burden of proving the police were given free and voluntary consent to enter the premises by someone with actual or apparent authority to do so." Williams v. State, 788 So. 2d 334, 336 (Fla. 5th DCA 2001). A minor may provide valid third-party consent for a warrantless entry of a home that the minor shares with a parent if the State can establish that: (1) the minor shares the home with an absent, non-consenting parent; (2) the police officer conducting the entry into the home reasonably believes, based on articulable facts, that the minor shares common authority with the parent to allow entry into the home; and (3) by clear and convincing evidence, the minor's consent was freely and voluntarily given under the totality of the circumstances.

[5] Based on our conclusion that the deputy was not legally inside the home when he observed the drugs in the bathroom, the plain view doctrine is inapplicable. See Ensor v. State, 403 So. 2d 349, 352 (Fla. 1981). As a result, since the entry and search were illegal, Ortiz's statements to the deputy must also be suppressed as fruit of the poisonous tree. See Wong Sun v. United States, 371 U.S. 471 (1963).

Saavedra v. State, 622 So. 2d 952, 954 (Fla. 1993) (adopting common authority test to determine validity of third-party consent set out in United States v. Matlock, 415 U.S. 164, 170 (1974), which held that voluntary consent to search not limited to defendant but can be obtained from third party with common authority over or other sufficient relationship to premises or effects sought to be inspected).[6]

However, before an officer may be admitted into areas of the home other than common living areas, the officer must have a reasonable belief that the child consenting to the entry shares common authority over those areas. In determining the reasonableness of the police officer's belief, courts should consider the minor's age, maturity and intelligence. Saavedra, 622 So. 2d at 958. In a directive relevant to the instant case, the Saavedra court stated:

> The courts should also consider any other facts which might show that a police officer reasonably believed that a minor shared joint authority over the home, such as whether the minor had permission to allow entry into the home, whether the minor had a key to the home, and whether the minor shared common household duties with the parent. Certainly, it would be unreasonable to suggest that a child of tender years shared common authority with the parent over entry into a home. See Laasch v. State, 84 Wis. 2d 587, 267 N.W.2d 278, 282 (1978) (holding that the state did not show that defendant's five-year-old son possessed the capacity, the intelligence, or the authority to give constitutionally effective consent).

Id. Assuming, without deciding, that the child here had the authority, actual or apparent, to consent to the deputy's entry into the common areas of the home, the record fails to

[6] Third-party consent may be valid under either an actual or apparent authority theory. In Illinois v. Rodriguez, 497 U.S. 177 (1990), the United States Supreme Court extended the validity of third-party consent and held that a search is constitutional if based upon the consent of a third party when an officer has a reasonable basis to believe that the consenting person has common authority over the premises.

establish that the child could validly consent to entry of the locked master bedroom. Neither does the record demonstrate that once at the locked bedroom door, any exigency was apparent that authorized the deputy to enter the bedroom.

The dissent asks, "What was the officer to do?" The question suggests that the deputy's only option was to enter Ortiz's house without a warrant. That was clearly not the case. The deputy could have called the Department of Children & Families (DCF), the agency charged with insuring the welfare of children at risk. DCF could have then taken custody of the child or turned him over to a relative or other responsible party.

The dissent also asserts that the Fourth Amendment was not intended to prevent "humanitarian" actions by law enforcement officers. We agree, but only to the extent that the humanitarian actions of the police fall within one of the few, narrowly drawn exceptions to the Fourth Amendment proscription against warrantless entry into an individual's home. The key inquiry in all Fourth Amendment cases is whether the search was objectively reasonable. Anderson v. Creighton, 483 U.S. 635, 641 (1987). More specifically, the inquiry turns on what information the officer conducting the search possessed. The officer's subjective beliefs about the search are irrelevant. Id.

The dissent also questions if the officer's actions even constituted a search. "At the very core" of the Fourth Amendment "stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." Silverman v. United States, 365 U.S. 505, 511 (1961). With few exceptions, the question of whether a warrantless search of a home is reasonable, and hence constitutional, must be answered no. Kyllo v. United States, 533 U.S. 27, 31 (2001); see Rodriguez, 497 U.S. at 181; Payton v. New York, 445 U.S. 573, 586 (1980). On the other hand, the

antecedent question of whether or not a Fourth Amendment “search” has occurred is not so simple. Kyllo, 533 U.S. at 31. However, it is clear that technical trespass is not necessary for a Fourth Amendment violation; it suffices if there is “actual intrusion into a constitutionally protected area.” Silverman, 365 U.S. at 510. That certainly occurred here.

Finally, the dissent argues for the application of the "community caretaking function” exception to the warrant requirement first enunciated in Cady v. Dombrowski, 413 U.S. 433 (1973), a case involving an automobile search. In Dombrowski, the Supreme Court held that Wisconsin police officers, who had arrested a Chicago police officer for driving while intoxicated, did not violate the Fourth Amendment in searching the defendant's automobile trunk for a service revolver, which the arresting officers believed Chicago police officers were required to carry at all times. The Court concluded that the warrantless search of the impounded vehicle’s trunk was "constitutionally reasonable" because it was incident to the community caretaking function of the arresting officers to protect "the safety of the general public who might be endangered if an intruder removed a revolver from the trunk of the vehicle." 413 U.S. at 447. The Court explained:

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

> totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.

Id. at 441 (emphasis added).

In large part, because the community caretaking function exception arose in the context of searches and seizures of automobiles, and the Supreme Court has noted the historical distinction for Fourth Amendment purposes between automobiles and dwellings, Dombrowski, 413 U.S. at 447-48, many courts have limited the exception to automobile stops and seizures and have declined to expand it to the warrantless entry of a residence or business. See United States v. McGough, 412 F.3d 1232, 1238 (11th Cir. 2005) (stating "we have never explicitly held that the community caretaking functions of a police officer permits the warrantless entry into a private home," and holding that officers' warrantless entry not objectively reasonable when not justified by any compelling exigency); United States v. Erickson, 991 F.2d 529 (9th Cir. 1993) (refusing to extend community caretaking function to warrantless search of private home); United States v. Pichany, 687 F.2d 204 (7th Cir. 1982) (refusing to extend community caretaking function to warrantless search of warehouse); State v. Gill, 755 N.W. 2d 454 (N.D. 2008) (refusing to apply exception to warrantless search of dwelling). As the Eleventh Circuit stated in McGough, "Were we to apply the community caretaking exception . . . in this case, we would undermine the [Fourth] Amendment's most fundamental premise: searches inside the home, without a warrant, are presumptively unreasonable." 412 F.3d at 1239. Other courts, however, have applied the exception to validate entry into a home. See United States v. Rohrig, 98 F.3d 1506 (6th Cir. 1996) (holding that officer's warrantless entry into home was reasonable and

motivated by a community caretaking interest in quelling loud noise); United States v. Nord, 586 F.2d 1288 (8th Cir. 1978) (upholding warrantless entry of home).

The Florida cases that have relied on the community caretaker exception have done so only in the context of vehicle and boat searches.[7] The Florida Supreme Court expressly declined to adopt or rely on the community caretaking exception when given the opportunity to consider it in Riggs, because the court observed that Dombrowski "was expressly limited to the automobile context." 918 So. 2d at 280 n.1. Consequently, we are unwilling to adopt that exception in the case of residential searches.

There is no doubt that this case presents a close question. However, given the high value our society places on the sanctity of an individual's home, we must resolve the question against even a well-intended intrusion into the home by the government. In this case, the child's parents were late picking him up from school and could not be reached by telephone. The child, who had been at school all day, told the officer his parents should be at home. To allow entry into Ortiz's home on those facts alone, without any indication of foul play or evidence that anyone was even in the home at the time, seems patently unreasonable. These facts, or perhaps more accurately, the lack of facts, are a far cry from the circumstances present in Riggs.

We conclude that under the facts presented here, the deputy's warrantless entry into the locked bedroom did not fall within the exigent circumstances exception to the warrant requirement, and the State did not establish that the deputy had valid consent to enter the locked bedroom. Accordingly, the trial court erred in denying the motion to

[7] See Castella v. State, 959 So. 2d 1285 (Fla. 4th DCA 2007); State v. Patrick, 437 So. 2d 217 (Fla. 4th DCA 1983); Lovett v. State, 403 So. 2d 1079 (Fla. 1st DCA 1981); Cobb v. State, 378 So. 2d 82 (Fla. 3d DCA 1979).

suppress evidence. Because the motion was dispositive, Ortiz's convictions must be reversed.

REVERSED.

COHEN, J., concurs.
MONACO, J., dissents with opinion.

While I agree with the majority's assumption that the officer breached no constitutional proscriptions when he entered the house, I think that the same factors that authorized his presence in the house also authorized his entry into the bedroom. Because I conclude that the rule that the majority has forged concerning exigent circumstances was crafted in a far too stringent manner, I dissent. The result, to me, makes no sense.

What was the police officer to do? The officer received a call from the day-care center concerning a child whose parents were an hour and a half late in picking him up, and who had made no contact with the child care facility. The child indicated that he thought his parents were in the house. The police officer, as the trial court specifically found, was concerned with both the well-being of the child and the health of the parents. Indeed, at this point the most reasonable assumption for the officer to make was that the parents were suffering from some physical difficulty. His task at this point, in my judgment, was to reunite the child with his parents and to assure under these peculiar circumstances that the parents were not in physical distress. As the trial judge noted:

> There is absolutely nothing but clear, unambiguous, good intentions on the part of the police officer, to make sure that a child is returned to his family. And but for the fact that these items were left in plain view, I think the officer had every reasonable expectation from our society to make sure that somebody was not, where the child indicated a parent might have been, in extremis.

It would have been utterly irresponsible for the officer not to enter the home and look in the places that he thought the parents might be, particularly where, as the trial court indicated, there was no hint of an ulterior motive. I believe *Riggs v. State*, 918 So.

2d 274 (Fla. 2005), fully covers this situation, and that the order of the trial judge should be affirmed.

In *Riggs*, a child was found wandering naked and alone in the early morning hours. The child was in the company of local residents when the police arrived. The deputies decided to search a nearby apartment complex because they were concerned about the "welfare of the parents" and about "any type of child abandonment or anything like that." *Riggs,* 918 So. 2d at 276. The officers found a door to one apartment "slightly ajar," and conjectured that "that was possibly where the child had come out of." *Id.* The officers pounded on the door, but got no answer. Because they were concerned that something might have happened to the child's caregiver, or that someone inside might need medical attention, the deputies entered the apartment. There were three rooms in the apartment. In the first they found nothing out of the ordinary. In the second they found seven potted marijuana plants and a fluorescent light suspended above them. In the third they found Mr. Riggs and the child's babysitter. The trial judge suppressed the evidence, concluding that there were no exigent circumstances. The Second District disagreed and noted that "[t]he officers believed it was their duty to see that the child's caregiver was not incapacitated and justifiably entered the residence." *State v. Riggs,* 890 So. 2d 465, 467-68 (Fla. 2d DCA 2004). Our supreme court unanimously affirmed the district court, and held that "in entering Rigg's apartment without a warrant, the deputies acted reasonably and consistent with the Fourth Amendment." *Riggs,* 918 So. 2d at 283.

The supreme court reached this conclusion based on the doctrine of exigent circumstances. In doing so it posed and answered two critical questions. First, whether

the deputies had reasonable grounds to believe that the child's caregiver might be in need of medical attention. The court answered that question affirmatively. Next, the court asked whether the deputies had reasonable grounds to connect the feared emergency to the apartment they entered. Once again, the high court answered affirmatively. The court concluded its analysis by saying, "The resulting invasion of privacy is one that prudent law-abiding citizens can accept as the fair and necessary price of having the police available as a safety net in emergencies." *Riggs,* 918 So. 2d at 282-283.

I fail to see any significant distinction between *Riggs* and the present case. If we substitute the day-care center for the neighbors, we have essentially the same facts. The two critical questions should again both be answered affirmatively.

Accordingly, the actions of the police officer in the present case do not in my view violate the constitutional proscription against unreasonable searches and seizures. There was nothing unreasonable about the search, if, indeed, it was even a search, in the constitutional sense. The focus of his actions was not to find drugs, but to find the child's parents. The officer had reasonable grounds to believe that the child's caregiver might be in need of medical attention; indeed, that would have been a very normal assumption. Additionally, the officer had reasonable grounds to connect the feared emergency to the house he entered. The officer acted in a reasonable and effective manner, and we should not be discouraging such behavior.

We have come to recognize over the years that police officers frequently perform functions that are "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *See Cady v. Dombrowski*, 413

U.S. 433, 441 (1973). The United States Supreme Court has referred to this series of duties as "community caretaking functions." Caretaking functions are performed by police officers because we expect them to take those steps that are necessary to "ensure the safety and welfare of the citizenry at large." 3 LaFave, Search & Seizure (4th Ed. 2004), § 5.4(c), pp. 201-202. Searches undertaken by a law enforcement officer in fulfilling his or her community caretaking functions focus on "concern for the safety of the general public." *See Dombrowski*, 413 U.S. at 447; *Castella v. State,* 959 So. 2d 1285, 1292 (Fla. 4th DCA 2007).

Although the Florida Supreme Court has not specifically applied this theory to searches of houses or residences, primarily because of language in *Dombrowski* that appears to limit the holding in that case to searches of automobiles,[1] it did in *Riggs* use the "exigent circumstances" or "emergency" exception to the warrant requirement to accomplish much the same result.[2] No matter how we denominate it, it seems clear to me that the trial judge got it right and that the majority's view of the police officer's actions is too restrictive. The fourth amendment was not intended to prevent the humanitarian activity described in this case. In my perspective Florida has already joined the growing number of courts that recognize the community caretaker function of police officers, or its functional equivalent, the exigent circumstances doctrine, in warrantless entry cases such as the one presented here. *See, e.g., United States v. Bradley,* 321 F.3d 1212 (9th Cir. 2003); *United States v. Rohrig,* 98 F.3d 1506 (6th Cir.

[1] *See Riggs*, 918 So. 2d at n.1.

[2] A number of Florida District Courts of Appeal have applied the community caretaker exception to searches of automobiles and boats. *See, e.g., Castella*; *State v. Cobb,* 378 So. 2d 82 (Fla. 3d DCA 1980).

1996); *United States v. Nord,* 586 F.2d 1288 (8th Cir. 1978); *State v. Thompson,* 92 P.3d 228 (Wash. 2004); *People v. Ray,* 981 P.2d 928 (Cal. 1999). I would affirm.