The Impending Death of California's 'Community Caretaker'

By Patrick T. Santos

The end is near for California's "community caretaker" exception to the Fourth Amendment's warrant requirement established by the state Supreme Court's plurality decision in *People v. Ray* over 10 years ago. This is because *People v. Ray* will finally get to meet the U.S. Supreme Court's decision in *Brigham City v. Stuart*, in a case that the state Supreme Court will hear on Dec. 7, 2010: *People v. Troyer* (SC 180759.)

In *People v. Ray*, two police officers were dispatched to the defendant's home on the afternoon of Christmas Day in response to a neighbor's call that "'the door has been open all day and it's all a shambles inside.'" The neighbor did not know if anyone was home. The officers found the front door was two feet open, and they could see through the open door that the front room appeared to be ransacked. The officers repeatedly knocked and announced their presence but there was no response. There were no signs of forced entry but, based on his experience, one officer believed there was a "'95 percent' likelihood they had encountered a burglary or similar situation." The officers decided to enter the residence to conduct a security check, "'to see if anyone inside might be injured, disabled, or unable to obtain help' and to determine whether a burglary had been committed or was in progress." No one was inside, but the officers saw large amounts of cocaine and money in plain view.

Justice Janice Rogers Brown, in the lead opinion, writing for three justices, held the officers' warrantless entry through the open front door was not valid under the traditional emergency aid exigency analysis. While the officers were concerned about the possibility of an injured person inside the residence, they had no knowledge of any facts that would lead a reasonable person in their position to believe "entry was immediately necessary to aid life or limb."

Notwithstanding, the *Ray* plurality held the officers' warrantless home entry was valid under the "community caretaking" exception because they "acted reasonably to protect the safety and security of persons and property when they briefly entered defendant's residence without a warrant and then observed contraband in plain view." "While the facts known to the officers may not have established exigent circumstances or the apparent need to render emergency aid, they warranted further inquiry to resolve the possibility someone inside required assistance or property needed protection." Chief Justice Ronald M. George, in the concurring opinion, which also garnered three votes, held the officers' entry into the residence was permissible under the traditional exigent circumstances doctrine. They did not discuss whether any other exception to the warrant requirement applied. Justice Stanley Mosk, in a strong dissenting opinion found the warrantless entry was illegal and rejected both exigent circumstances and the creation of a "community caretaker" exception. Since *Ray*, warrantless home entries are constitutionally permissible if the officer's conduct is prompted by the motive of preserving life and the conduct reasonably appears to be necessary for that purpose. The linchpin of the exception is the complete disconnect from criminal investigatory activity. Thus, any subjective intention or motivation (even in cases of mixed motives) on the part of the officer to solve crimes will transform the caretaker back into an officer. Only if the officer's motivations are entirely pure can he be called a true "community caretaker."

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California courts were not the only ones to recognize this new way around the Fourth Amendment's chief evil. New York, for example, had *People v. Mitchell* (39 N.Y.2d 173, 383 N.Y.S.2d 246, 347 N.E.2d 607, 609 (1976).) *Mitchell*, like *Ray*, turned on the entering officer's subjective intent. The U.S. Supreme Court unanimously rejected the *Mitchell* test in *Brigham City*, and simultaneously superseded *Ray* — implicitly at least.

In the landmark *Brigham City* case, the U.S. Supreme Court affirmed that the subjective motivation of the officer is generally irrelevant. It is clear from *Brigham City*, an emergency is to be viewed from an objective perspective and not whether the motivation of the officer was or was not to protect innocent people. Just in case this point was not clear enough after *Brigham City*, the U.S. Supreme Court in *Michigan v. Fisher* (130 S. CT. 546 (2009)), again affirmatively held that the test for emergency aid is an objective one.

Despite *Brigham City*'s clear command, California's 1st District Court of Appeal in *People v. Madrid* (168 Cal. App. 4th 1050, 85 Cal. Rptr. 3d 900 (1st Dist. 2008)), continued to use *Ray*'s "community caretaker" terminology. In *Madrid*, the court accepted the *possibility* that the community caretaking exception might justify stopping a vehicle. Several California courts continue to use the alliterative exception despite its utter incongruity with *Brigham City* — this should change with *People v. Troyer.*

On April 28, 2010, the state Supreme Court unanimously voted to grant review of *People v. Troyer,* an unpublished case out of the 3rd District Court of Appeal,

In deciding *People v. Troyer,* the Court of Appeal seamlessly relied exclusively upon *Brigham City* and *People v. Ray* to conclude that a warrantless entry into a locked upstairs bedroom was not constitutionally permissible. As a result, the state Supreme Court will finally get a chance to revisit *People v. Ray* — hopefully, the result will mark an important change in California search law. That is, hopefully the "community caretaker's" death is impending.

Equivocality aside, the community caretaker exception has been unconstitutional since *Brigham City.* Determined that our high Court be made aware of this, I drafted and submitted an application to file an amicus curiae brief in *People v. Troyer* on behalf of the Law Offices of Ronald Richards and Associates. I read somewhere that the term "amicus curiae" literally means a friend of the court; one who gives information for the assistance of the court on some matter of law on which the court might be doubtful or mistaken rather than one who gives a highly partisan account of the facts.

Hopefully, the Court will use *People v. Troyer* to deliver the final blow to *People v. Ray,* and effectively allow practitioners and lower courts to avoid the exception altogether. Time and time again, the U.S. Supreme Court has flatly rejected any consideration of officer subjective motivations in determining a search's constitutionality. The state Supreme Court is excepted to adopt objectivity in *Troyer.*

A purely objective approach is what the law requires and what all defendants are entitled to after *Brigham City.* Anything less is illegal. The High Court has other important issues to reach in *Troyer,* but signaling *Ray*'s death knell would be of great assistance to lower courts and practitioners alike.

Californians need community caretakers, but without consent and without *true exigencies*, our cherished caretakers may not make warrantless home entries — *sui generis* intent or not.