avoid the stigma associated with a mental disorder as well as an emphasis on the defendant's retaining ultimate authority to make fundamental decisions regarding the case and bear the consequences of any such decision.

Read builds upon *Frendak* in emphasizing an individual's freedom to reject the insanity plea, establishing that defense counsel practicing in the Ninth Circuit may need to formally assess a defendant's capacity to reject an insanity defense before overriding the client's wishes. In such instances, it is highly likely that forensic experts will be relied upon to provide opinions on this specific question of capacity.

Community Caretaking as an Exception to Warrantless Residential Entry

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Warrantless Residential Entry Not Allowed in Non-Exigent Crisis Situations

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Key words: warrantless entry; crisis situation; community caretaking

In *People v. Ovieda*, 446 P.3d 262 (Cal. 2019), Willie Ovieda argued that evidence found in his home during a warrantless entry should be suppressed at trial. The trial court denied this motion, citing the "community caretaking" exception to the warrant requirement as delineated in *People v. Ray*, 981 P.2d 928 (Cal. 1999); the state Court of Appeal affirmed the judgment. The Supreme Court of California reversed the judgment of the lower courts, holding that the community caretaking exception was not in fact a recognized exception to the residential warrant requirement.

Facts of the Case

In June 2015, police officers responded to the home of Mr. Ovieda after family members reported that he was suicidal and had access to a firearm. Upon arrival, police met with Trevor Case, a friend of Mr. Ovieda who had been present when Mr. Ovieda made suicidal statements. Mr. Case explained to the police that Mr. Ovieda had a history of suicidal ideation and attempts, and he had access to guns in his home. Mr. Case described that, earlier in the day, he, his wife (Amber Woellert), and Mr. Ovieda had been inside when Mr. Ovieda began making suicidal statements and attempted to get access to his firearms. Mr. Case said he prevented Mr. Ovieda from doing so by collecting the firearms and moving them to the garage. Given Mr. Case's concern for Mr. Ovieda, he contacted Mr. Ovieda's family, who in turn made a report to police.

Mr. Ovieda eventually left the residence voluntarily alongside Ms. Woellert and was subsequently handcuffed and searched. Police officers then conducted a "'protective sweep to secure the premises'" (*Ovieda*, p 266, citing the trial court's hearing on the defendant's suppression motion). Upon entry into the home, officers smelled marijuana and found paraphernalia related to "marijuana cultivation and concentrated cannabis production" (*Ovieda*, p 266). They also found ammunition for a weapon, a gun case, scales, and an industrial drying oven, prompting them to call for additional police to respond to the scene. No search warrant was obtained. Mr. Ovieda was charged with manufacturing a controlled substance, importing an assault weapon, and possessing a silencer and a short-barreled rifle.

Mr. Ovieda motioned to suppress the evidence found in the warrantless search of his home. The prosecution argued the search was justified under the community caretaking exception. That is, "circumstances short of a perceived emergency may justify a warrantless entry" into a private residence, such that police could ensure neither people nor property inside the residence needed protecting (*Ray*, p 934). Officers Corbett and Garcia testified at the suppression hearing. Officer Corbett testified that he "felt duty bound to secure the premises and make sure there were no people inside that were injured or in need of assistance" (*Ovieda*, p 266). Yet, on cross-examination, he conceded that Mr. Case had informed police that only he, Ms. Woellert, and Mr. Ovieda had been in the house at the time and that the

firearms had been moved to safety. Officer Corbett further acknowledged that he had no reason to believe that additional people were in the home. Ultimately, the trial court denied Mr. Ovieda's motion. Mr. Ovieda subsequently pled guilty to the manufacturing count and to possession of an assault weapon, and was placed on probation. The appeals court relied on the *Ray* decision and affirmed the judgment that the search was justified under the community caretaking exception. Mr. Ovieda appealed to the Supreme Court of California.

Ruling and Reasoning

The Supreme Court of California reversed the judgment of the Court of Appeals, remanding the case back to the trial court so that Mr. Ovieda could withdraw his guilty plea and the trial court could grant his motion of suppression. In their reasoning, the supreme court first considered the warrant requirement broadly, including its exigent circumstances exception. Then, the court considered the validity of the community caretaking exception.

In its discussion, the court cited the Fourth Amendment's prohibition of unreasonable searches and seizures by the government. That is, governmental searches without prior judicial approval are illegal, except in a few specific circumstances. One such exception is an exigent circumstance, which was defined as "an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or destruction of evidence" (citing *People v. Panah*, 107 P.3d 790 (Cal. 2005), p 836). This exception applies in emergency situations in which police do not have sufficient time to seek a warrant. Furthermore, in the course of exercising their duties, police may seize any evidence in plain view. In Mr. Ovieda's case, the court emphasized that the facts of the case did not support the existence of an exigency. Rather, the court noted that before police entered the home, Mr. Ovieda "was in handcuffs and under police control. There were no reports that shots had been fired, that defendant had threatened anyone else, or that there were any victims inside the house" (*Ovieda*, p 269).

Having decided that no exigent circumstances existed, the court addressed whether the community caretaking exception was a justifiable exception to warrantless entry of his residence. In doing so, the court turned again to the *Ray* decision and disagreed with the lead opinion in *Ray*. In *Ray*, there was a lead opinion with concurrence and dissent. The lead opinion in *Ray* asserted that "the community caretaking exception arises in two situations: entry to render emergency aid and entry to preserve life or property" (*Ovieda*, p 271). Accordingly, the community caretaking exception applies in circumstances in which police seek to provide aid and protection, but do not rise to the level of a perceived emergency (such as coming across a recent burglary). The lead opinion in *Ray* supported its ruling with two earlier cases, *People v. Roberts,* 303 P.2d 721 (Cal. 1956), and *People v. Hill*, 528 P.2d 1 (Cal. 1974), in which police entered a residence under such an exception. Nevertheless, the California Supreme Court found that the lead opinion in *Ray* inappropriately broadened exceptions to the warrant requirement and did not constitute binding precedent because it did not reach a majority. The crux of the California Supreme Court's ruling lay in the notion of "articulable facts." Namely, the situations described in *Ray* relied on hypotheticals, as opposed to articulable facts (such as those underlying *Roberts* and *Hill*), and consequently diluted the standard for exigency. With respect to Mr. Ovieda's case, as previously discussed, the court indicated that the responding officers did not present any facts indicating an exigent circumstance. Additionally, the court noted that officers could have temporarily taken Mr. Ovieda into custody for a mental health evaluation and thereafter obtained a warrant for the seizure of the firearms if they reasonably believed he was a danger to himself or others as a result of mental illness. Beyond *Ray*, the court reviewed the precedent set forth by the U.S. Supreme Court. Notably, the court purported that precedent (with particular reference to *Cady v. Dombrowski,* 413 U.S. 433 (1973)) had only applied the concept of community caretaking to searches of vehicles, not residences, which have been recognized as meriting a higher expectation of privacy and protection from government intrusion. Therefore, the Supreme Court of California concluded that the community caretaking exception allowing warrantless entry into a residence did not exist.

Discussion

In *People v. Ovieda*, the Supreme Court of California addressed the legality of the police's ability to enter a residence without a warrant for the purpose of community caretaking. At the center of this case are the competing claims of civil rights and paternalistic and intrusive government. Mr. Ovieda argued his Fourth Amendment rights were infringed when the police entered his home without a warrant. On the opposing side, the state argued that police had an obligation to public safety to ensure that neither people nor property inside the residence needed protecting. The Supreme Court of California noted the facts of the case did not support a finding of exigent circumstances. Moreover, the court concluded the community caretaking claim is not a recognized exception to the residential warrant requirement, emphasizing the sanctity of the home and the need for protection against government intrusion. Thus, the Supreme Court of California upheld the stringent standards set forth by the Fourth Amendment.

A ruling in the other direction would have had significant implications because it would have broadened the avenues by which police could pursue entry into a home without a warrant. In the dissenting opinion in *Ray*, Justice Mosk argued just that. Moreover, as argued in the Brief for the American Civil Liberties Union Foundation of Southern California as *Amicus Curiae* (*Ovieda,* p 1038), there likely would have been unintended and dangerous consequences to such a broadening of police power. An important consideration for mental health services is that, had the court ruled in the other direction, people in crisis may be deterred from calling police for help out of fear that their homes and their privacy would be violated.

Prior Bad Acts in Affirmative Defense Cases

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Prior Bad Acts Ruled Inadmissible to Rebut Defenses of Extreme Mental and Emotional Disturbance and Lack of Penal Responsibility

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In *State v. Lavoie*, 453 P.3d 229 (Haw. 2019), the Supreme Court of Hawaii considered Marlin Lavoie's challenge of a trial court's decision to allow testimony on his prior bad acts and errors in jury instructions. The state supreme court ruled that the trial court erred in allowing testimony about prior bad acts because it was not relevant to rebut the defendant's affirmative defenses. It also ruled that a jury instruction about such testimony incorrectly allowed jurors to consider prior bad acts as they related to his intent to commit the alleged crimes, and that a jury instruction on the definition of extreme mental and emotional disturbance (EMED) was not prejudicial.

Facts of the Case

On March 20, 2013, following relationship conflict and a brief separation, Mr. Lavoie fatally shot his girlfriend, Malia Kahalewai. Mr. Lavoie was charged with murder in the second degree and weapons offenses. He raised affirmative defenses of EMED and lack of penal responsibility. Before trial, the court granted Mr. Lavoie's motion to preclude evidence and testimony related to his criminal history, prior bad acts, and allegations of violent crimes.

At trial, the defense counsel cross-examined Nicole Aea, a friend of Ms. Kahalewai. Ms. Aea testified that Ms. Kahalewai had previously left Mr. Lavoie after arguments. The state argued this line of questioning opened the door to ask about the nature of those arguments and moved to introduce evidence showing that "'at least some of these arguments involved prior abuse'" (*Lavoie*, p 235) and Ms. Kahalewai's subsequently leaving. The court allowed this evidence over the defense's objection. The prosecution sought to introduce testimony about additional prior instances of abuse. Defense counsel objected on the grounds that these incidents were not relevant to the crux of their defense (i.e., Ms.