

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

STATE OF OHIO,	:	
	:	Case No. 21CA3761
Plaintiff-Appellee,	:	
	:	
v.	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
JASON R. PINE,	:	
	:	RELEASED: 06/27/2023
Defendant-Appellant.	:	

APPEARANCES:

Kathleen Evans, Assistant State Public Defender, Office of the Ohio Public Defender, Columbus, Ohio, for appellant.

Jeffrey C. Marks, Ross County Prosecuting Attorney, and Pamela C. Wells, Assistant Ross County Prosecutor, Chillicothe, Ohio, for appellee.

Wilkin, J.

{¶1} This is an appeal from a Ross County Court of Common Pleas judgment of conviction in which the trial court denied appellant, Jason R. Pine’s, motion to suppress the firearm, and accepted his no contest plea to having weapons while under disability. The trial court imposed a prison term of 18 months.

{¶2} Pine in his sole assignment of error challenges the trial court’s denial of his motion to suppress. Pine argues the state failed to establish any of the exceptions to uphold the warrantless search of his trailer home for the AR-15 firearm. Specifically, Pine contends the trial court erred in finding that the plain view and community-caretaking exceptions were demonstrated by the state.

{¶3} We overrule Pine’s assignment of error and hold that under the totality-of-the-circumstances in the case at bar, the warrantless search of Pine’s trailer for the unsecured, loaded AR-15 firearm was reasonable and pursuant to the exigent circumstance of community-caretaking exception. Accordingly, the trial court’s decision is affirmed and Pine’s conviction is upheld.

FACTS AND PROCEDURAL BACKGROUND

{¶4} Pine initially pleaded not guilty to the sole indicted offense of having weapons while under disability, a third-degree felony, but on October 26, 2021, he changed his plea to no contest. The trial court accepted Pine’s no contest plea and imposed a prison term of 18 months, a sentence recommended by the state as part of the plea agreement. Pine’s change of plea proceeded after the trial court’s denial of his motion to suppress. Pine requested the suppression of the AR-15 firearm that was seized from under his trailer.

{¶5} The events began with a 9-1-1 call for law enforcement assistance due to a domestic dispute between Pine and his live-in fiancée Chelsea Knisley. Deputy Jacob Riege was first on the scene and, upon arriving, he saw Chelsea and her mother, Martha Knisley, standing outside.¹ Within 30 seconds of arriving, Deputy Riege observed Chelsea with a bloody shirt and was then informed that Pine had Chelsea on the ground by the throat, and Chelsea’s 12-year-old daughter, M.K., hit Pine with a baseball bat on the head. Deputy Riege was informed that the blood on Chelsea’s shirt was Pine’s after he was struck by the baseball bat. Additionally, within the same 30 seconds, Deputy Riege was

¹ Deputy Riege’s body camera video began recording a minute before arriving and stops recording 4 hours later.

immediately warned not to approach the trailer because Pine had a firearm, an AR-15. Deputy Riege was also informed that Pine had a magazine with him.

{¶6} Chelsea elaborated that she and Pine began arguing on their way home from the casino, where Chelsea spent too much money. As soon as they arrived home, Pine wanted to drive away with her truck, but she was not going to let him since the truck belongs to her, he just got out of jail for an OVI offense, and he took five lines of Xanax. The arguing turned physical and Pine had Chelsea by the throat on the ground. Martha lives next door and came to aid her daughter, but Pine pushed Martha's face to keep her off of him. M.K. also came to her mother's aid and used the baseball bat she was playing with and struck Pine on the head.

{¶7} Pine was severely injured and was bleeding. Chelsea went inside the trailer and got a rag and was assisting Pine with his injury. While inside the trailer, the arguing continued and Pine obtained his AR-15 firearm and began loading the weapon. Martha and M.K. followed them inside and were aiding Chelsea. Pine pointed the firearm at Martha and threatened her. M.K. struck Pine again with the baseball bat. This is when the magazine Pine had fell on the ground, but he picked up another magazine and ran outside. Pine informed them that he was not leaving without a fight.

{¶8} Another deputy arrived approximately 12 minutes after Deputy Riege and was updated of the situation—Pine had Chelsea by the throat, was injured and had an AR-15 firearm on him. The deputies looked around the wooded area by the trailer because that was where they initially thought Pine ran to. But after

Martha checked in with her husband, who was next door and had been on the front porch with a clear view of the trailer, she informed Deputy Riege that Pine was hiding under the trailer. Martha's husband saw Pine go under the trailer through an opening by the back steps.

{¶9} Deputy Riege took pictures of Chelsea's neck and when he was about to hand her the complaint form, she said she did not want to file charges and was no longer cooperating. Within a minute of Chelsea's change of attitude, Deputy Riege observed Pine under the trailer. Deputy Riege relayed his observation to the other deputy, but she was unable to see Pine. Chelsea walked away as the deputies were discussing the situation and went inside the trailer yelling that she was not going to file charges. Martha, on the other hand, wanted to file charges and took the forms from Deputy Riege and went to her house to complete them.

{¶10} The deputies maneuvered their patrol cruisers to establish a perimeter around the trailer. At this time, approximately 55 minutes since arriving, dispatch advised Deputy Riege that Pine had felony convictions and was under disability. A sergeant also arrived at the scene and persuaded Chelsea to come out, but then she wanted to return back inside the trailer. The deputies arrested her for misconduct at an emergency scene. An hour and 18 minutes after arriving, Deputy Riege moved his cruiser and went to talk to Martha and the others at their house. Within two minutes of standing on the front porch with a clear view of the back of Pine's trailer, Deputy Riege observed Pine crawl out, then back in, from a hole under the back of the trailer. And within 20 seconds,

Deputy Riege observed two individuals standing in front of the hole at the back of the trailer. Martha advised the Deputy that they are Pine's parents.

{¶11} Deputy Riege asked Pine's parents to come his way and informed them that Pine needed to come out from under the trailer. Pine's mother stated that Pine is injured and she was worried about him. Deputy Riege asked the parents for their assistance to call Pine out. They agreed and Pine crawled out from under the trailer and headed toward Deputy Riege. This occurred approximately 1 hour and 26 minutes after Deputy Riege arrived at the scene. Pine cooperated and followed Deputy Riege's instruction to drop the knife, be patted down and arrested. Pine declined medical assistance, and after he was read his *Miranda* rights, he continued to cooperate and informed the deputy his side of what occurred. Pine denied grabbing Chelsea by the throat, and stated that all he was trying to do was to restrain Chelsea from using a log roller to bust out the truck's windows. Pine confirmed that M.K. struck him on the head with a baseball bat.

{¶12} After securing Pine in the back of the cruiser, Deputy Riege continued to talk to his parents. The deputy informed them that Chelsea and Pine got drugs on the way home from the casino, that both were arrested and that Pine was arrested for domestic violence as Chelsea had redness on her neck. While Deputy Riege was speaking to the parents, Pine's father said he asked Pine if he had a weapon, and that Pine stated he did not, but then the father clarified: "but we know how that goes." Within two minutes of that

statement by the father, the sergeant stated that if the firearm is under the trailer, they need to retrieve it so that no one else gets it.

{¶13} Deputy Riege then returned to Martha's house and spoke with M.K. and others who were there. The deputy was again informed that Pine went under the trailer with the AR-15 firearm with a magazine. Martha handed Deputy Riege the magazine that Pine dropped earlier.

{¶14} On the body camera video at approximately 1 hour and 58 minutes, Deputy Riege begins searching for the AR-15 firearm by kneeling down on his knees and shining a flash light through the openings under the trailer. The Deputy began his search moving counter clockwise beginning with the side opening, and ended his search, at the back opening where Pine had emerged. Within 10 seconds of bending down at this opening, Deputy Riege indicated he found the firearm. He informed the sergeant to look right there at the black part of the firearm right under the tarp, and then the sergeant stated I also see the magazine. To retrieve the firearm, the sergeant pulled back part of the opened siding. After the firearm was retrieved, the sergeant indicated that the safety was off and that there was a bullet in the chamber.

{¶15} After the firearm was seized, Pine was questioned about it, in which he explained that he has it for protection. Normally the weapon would be inside the trailer but he took it outside this time because Martha threatened to get her gun, and he got his AR-15 firearm to hide it. Deputy Riege again spoke to Martha, her other daughter, and M.K. before leaving the scene approximately 2 hours and 33 minutes after arriving.

{¶16} Deputy Riege's search for the AR-15 firearm was the basis of Pine's motion to suppress. Pine challenged the warrantless search since both he and Chelsea were in custody at the time. The state opposed Pine's motion arguing that there was probable cause to conduct the search and that the warrantless search was appropriate pursuant to the plain view and exigent circumstance exceptions. Prior to the motion to suppress hearing, the state and Pine submitted stipulations of facts:

1. On June 9, 2021, Deputy Reige (sic.) was dispatched to 3479 Ragged Ridge Road, Frankfort, Ohio in reference to a domestic dispute.
2. Upon arrival, Deputy Reige (sic.) makes contact with Chelsey (sic.) Knisley, Defendant's live in girlfriend, and Martha Knisley, Chelsey's (sic.) Mother.
3. Both advise Defendant had physically assaulted Chelsey (sic.). Chelsey (sic.) noted she and Defendant had been in Columbus and he had gotten mad at her on the way home. He had bought Xanax in Columbus and had taken them.
4. When Defendant and Chelsey (sic.) arrived home, the argument continued in the home. Chelsey (sic.) advised Defendant "choked" her until her 12-year-old daughter hit him with a baseball bat to get him off of her.
5. When Deputy Reige (sic.) started checking the back of the trailer, both Chelsey (sic.) and Martha stated the Defendant had a gun and it was a AR-15.
6. Both noted Defendant ran to the back of the home once Law Enforcement arrived.
7. Deputy Reige (sic.) established a perimeter and waited until back up arrived.
8. Martha's husband stated he had seen Defendant crawl under the trailer- this fact was related to Deputy Reige (sic.).
9. The juvenile child of Chelsey (sic.) confirmed Chelsey's (sic.) story and stated after she struck Defendant with the baseball bat, he grabbed a gun and was loading it. She also advised Defendant pointed the gun at Martha and threatened to kill her.
10. Another witness, Shannon Teets, stated she saw Defendant go under the trailer with the gun.

11. As Deputy Reige (sic.) was speaking to neighbors, he could see two arms start to come out from underneath the trailer.
12. The Defendant came out from underneath the trailer long enough to make eye contact with Deputy Reige (sic.), and then retreated back in.
13. Defendant eventually came out, with a knife on his hip, which he threw to the ground upon surrendering to law enforcement. No gun was located on Defendant's person.
14. Defendant was secured and his injury was assessed. He was handcuffed and secured by law enforcement in the back of the cruiser. He was subsequently transported to the hospital for treatment for the head injury.
15. At least thirty (30) minutes elapse from the time of when Defendant is arrested to the time the gun is located under a tarp under the trailer.
16. Deputy Reige (sic.) opines on body camera he does not believe he has the right to enter the home. (The State does not stipulate this is a legal fact.)

{¶17} At the motion to suppress hearing, Deputy Riege was the sole witness with three exhibits admitted: state's exhibits 1 and 2—photos of the trailer; and defendant's exhibit A—Deputy Riege's body camera video. The state and Pine submitted supplemental briefing in support of their arguments after the hearing. The trial court denied Pine's motion to suppress finding that:

Both parties in this case worked diligently to put together (sic.) a stipulation of facts, and I do very much appreciate that. Um, as I watch the evidence in this case from the video and from what I heard, um, I know you saved a significant amount of time doing that. I do appreciate that much. I also appreciate the briefs that both of you did. As I look through this; I think there is only one factual finding that I need to make to supplement the stipulation of facts. This obviously doesn't make it a stipulation but the court would find; I would find that in this case that the officer did not have to disturb the siding to see the firearm. However, he did have to lay down and use his flashlight to see the- the firearm. * * * [S]o when I look at this case, I don't think there is any doubt that the law enforcement have probable cause to be on scene, to go on to the property, um, then in fact arguably they could have gone into, perhaps into the trailer until they apprehended the Defendant. It's not unusual, for people to be able to access crawl spaces from either inside a trailer or outside the

trailer, so it would be reasonable to think he was going between the two. And based upon the information they had of the firearm, the assault, and all of that I think it would have been reasonable. However, the Defendant was not inside the trailer, it turns (sic.) out he was under the trailer and he did come out. So I find there is certainly probable cause to be outside the trailer; there is probable cause to be around the trailer. So what we really get into then isn't so much probable cause, but it's the second and third of the state's brief that I think is interesting. The plain view and the exigent circumstances. I think the use of the flashlight is permissible and I would find that the firearm was in plain view when the officer found it. Now I also though do understand the distinction and what the Defendant is arguing; which is essentially ok, the firearm, even if the firearm is in plain view the situation had stopped they could have just secured the scene, and gone and got a search warrant. And then I think what we really get down to then again is reasonableness. I mean the Fourth Amendment is to prevent unreasonable search and seizures. So were the officers actions reasonable? Um, in light of all of the factors that they had at their disposal at the time this occurred. I think they had a legal right to be in the area where they observed the evidence; I think they have probable cause to believe there was a firearm was under there, of course you need probable cause to get the search warrant anyway. I believe they had probable cause to believe the firearm was under there. And then the next question is did they have lawful access to the evidence itself (sic.)? I find that they did that – that they did. I do understand again the Defendant's argument that they could have got a search warrant, but in this case it wasn't a long lapse of time, the firearm would have been accessible (sic.) uh, perhaps to others, certainly to children, certainly to other people in the neighborhood. Um, and quite frankly they didn't know where the gun was. They believed it might be under there, but if they had shown – shined the flashlight saw that it was not there; they then would have had to extend their search perhaps into nearby areas where a child could have stumbled (sic.) upon it. So actually they didn't know where it was. Reasonably it was underneath there. So I think if I were a law enforcement officer and I was thinking; I'm in an area where other children and people are around I don't know the firearm is under the trailer, I think it is. Um, but what if he threw it into the woods before he went in to there – under there. Then we have a real problem. So having said all that, I'm going to overrule the motion to suppress.

{¶18} The trial court's denial of Pine's motion to suppress is before us for review.

ASSIGNMENT OF ERROR

The trial court erred by failing to suppress the firearm obtained as a result of an illegal search in violation of Mr. Pine's rights under the Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution.²

{¶19} Pine argues that Deputy Riege's warrantless search of his home was unreasonable and that the state failed to rebut the presumption in which none of the valid exceptions to the warrant requirement applied. Pine maintains that the search was per se unreasonable and the trial court erred in agreeing with the state that the plain view and exigent circumstance of community-caretaking exceptions justified the warrantless search. In challenging the trial court's determination that the plain view exception applied, Pine asserts the deputies were not legally located on the premises when they conducted the search because the deputies already arrested Pine and secured him in the cruiser. Further, the deputies did not "inadvertently observe the gun," where they conducted an "intentional and thorough search for a gun."

{¶20} Pine also challenges the trial court's determination that exigent circumstances justified the warrantless search of his home. At the time the deputies conducted the search, there was no one in the trailer, "there was no risk of evidence being moved or destroyed, there was no need to prevent escape, and there was no imminent danger." Finally, Pine argues that the very narrow

² Pine in the text of the proposition of law refers to both the Fourth Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution, but he failed to present any argument that his right under the Ohio Constitution was violated. Accordingly, we only address Pine's claims under the Fourth Amendment. See *State v. Jackson*, __ Ohio St.3d __, 2022-Ohio-4365, __ N.E.3d __, ¶ 11 (the Supreme Court of Ohio evaluated Jackson's claim solely under the Fourth Amendment because he failed to argue that the Ohio Constitution provided him greater protection, and he failed to develop any argument under the Ohio Constitution.)

community-caretaking exception does not apply in this case. According to Pine, the United State Supreme Court decision in *Caniglia v. Strom*, __ U.S. __, 141 S.Ct. 1596, 209 L.Ed.2d 604 (2021), holds that the community-caretaking exception “does not apply to warrantless searches and seizures in the home.” Pine disputes the trial court’s finding that the firearm would be accessible to others, including children, in which the deputies conducted an extensive search on their knees and hands with the use of a flashlight to find it. Pine argues that even if the trial court’s factual findings were supported by the record, the deputies’ “desire to protect the public did not justify a warrantless search of Mr. Pine’s home.”

{¶21} In response, the state contends that the deputies had probable cause to conduct the search and both the plain view and community-caretaking exceptions apply.³ For the plain view exception, the state disputes Pine’s assertion that the deputies were not legally on the property when they conducted the search. The state contends that the deputies were still responding to the 9-1-1 call and investigating the crimes committed by Pine, including Pine threatening Martha with the firearm and taking the firearm with him when he hid under the trailer. Further, the deputies’ use of the flashlight does not negate the plain view exception. Moreover, the firearm was immediately apparent to Deputy Riege. With regard to the community-caretaking exception, the state asserts that Deputy Riege had probable cause that a crime had been committed, that the firearm was

³ The state does not challenge Pine’s assertion that the crawl space under the trailer is part of Pine’s home. Thus, this issue is not before us.

involved in the crime, and that the firearm was under Pine's trailer. The removal of the firearm was necessary to protect the victim's minor child and other members of the community from the firearm. The state argues that *Caniglia* is factually distinguishable from the case at bar in which the facts here established a minor child was involved and present.

{¶22} Pine in his reply brief, reiterates that once Chelsea and Pine were taken into custody, the deputies' lawful presence responding to the emergency call ended.⁴ Thus, the plain view exception does not apply as they were no longer lawfully on the premises. Moreover, Pine reasserts that the *Caniglia* decision "explicitly held that the community caretaking exception *cannot* be used to justify a warrantless search of a home under the Fourth Amendment to the United States Constitution." (Emphasis sic.) Additionally, Pine argues there were no exigent circumstances at the time of the search, where both Pine and Chelsea were in custody and Chelsea's minor child was at Martha's residence. Accordingly, there was no urgency to search before obtaining a search warrant.

I. Standard of Review

{¶23} Our review of the trial court's denial of Pine's motion to suppress presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. As an appellate court, we "must accept the trial court's findings of fact if they are supported by competent, credible evidence." *State v. Banks-Harvey*, 152 Ohio St.3d 368, 2018-Ohio-201,

⁴ Pine's reply brief was untimely filed. Nonetheless, we will consider the arguments within the brief in the interest of justice.

96 N.E.3d 262, ¶ 14. But we “must decide the legal questions independently, without deference to the trial court’s decision.” *Id.*

II. Fourth Amendment Law

{¶24} The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The “ ‘ultimate’ touchstone of the Fourth Amendment is “reasonableness.” ’ ’

Riley v. California, 573 U.S. 373, 381, 134 S.Ct. 2473, 189 L.Ed.2d 430 (2014), quoting *Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006).

{¶25} “[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). “It is a ‘basic principle of Fourth Amendment law’ that searches and seizures inside a home without a warrant are presumptively unreasonable.” *Payton v. New York*, 445 U.S. 573, 586, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980), citing *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971).

{¶26} Once a defendant demonstrates that a warrantless search was conducted, then the burden shifts to the state to demonstrate “that the search fits within one of the defined exceptions to the Fourth Amendment’s warrant

requirement.” *Banks-Harvey*, 152 Ohio St.3d 368, 2018-Ohio-201, 96 N.E.3d 262, ¶ 18.

{¶27} One of the exceptions is plain view.

Under the Fourth Amendment’s plain-view doctrine, an officer may seize an object in plain view without a warrant if (1) the officer did not violate the Fourth Amendment in arriving at the place from which the evidence could be viewed, (2) the object’s incriminating nature is immediately apparent, and (3) the officer has a right to access the object where it is located.

State v. Burroughs, 169 Ohio St.3d 79, 2022-Ohio-2146, 202 N.E.3d 611, ¶ 15.

{¶28} In *State v. Halczynszak*, the Supreme Court of Ohio held that

The “immediately apparent” requirement of the “plain view” doctrine is satisfied when police have probable cause to associate an object with criminal activity.

In ascertaining the required probable cause to satisfy the “immediately apparent” requirement, police officers may rely on their specialized knowledge, training and experience[.]

25 Ohio St.3d 301, 496 N.E.2d 925 (1986), paragraphs three and four of the syllabus.

{¶29} Another is the “community-caretaking exception, which courts sometimes refer to as the ‘emergency-aid exception’ or ‘exigent-circumstance exception.’” *State v. Dunn*, 131 Ohio St.3d 325, 2012-Ohio-1008, 964 N.E.2d 1037, ¶ 15. “[W]arrants are generally required to search a person’s home or his person unless ‘the exigencies of the situation’ make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” *Mincey v. Arizona*, 437 U.S. 385, 393-394, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978), citing *McDonald v. United States*, 335 U.S. 451, 69 S.Ct. 191, 93 L.Ed. 153 (1948). “ ‘Exigency’ denotes the existence of ‘real immediate and serious consequences’ that would certainly occur were a

police officer to postpone action to get a warrant.” *State v. Parker*, 11th Dist. Trumbull No. 2016-T-0097, 2018-Ohio-3239, ¶ 21, citing *Welsh v. Wisconsin*, 466 U.S. 740, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984).

{¶30} “The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.’ ” *Dunn* at ¶ 18, quoting *Wayne v. United States*, 318 F.2d 205, 212 (D.C.Cir.1963).

“The exigent or emergency circumstances exception to the warrant requirement applies in a variety of situations, including when entry into a building is necessary to protect or preserve life, to prevent physical harm to persons or property, or to prevent the concealment or destruction of evidence, or when officers are in ‘hot pursuit’ of a fleeing suspect or someone inside poses a danger to the police officer’s safety.”

State v. Fenter, 3d Dist. Paulding No. 11-22-01, 2022-Ohio-3279, ¶ 24, quoting *State v. Byrd*, 2d Dist. Montgomery No. 27340, 2017-Ohio-6903, ¶ 13.

{¶31} “The exigent circumstances exception applies when ‘law enforcement officers * * * have reasonable grounds to believe there is [an] immediate need to protect their lives or others.’ ” (Ellipses sic.) *State v. Mattocks*, 11th Dist. Portage No. 2013-P-0015, 2013-Ohio-4965, ¶ 26, quoting *State v. Pape*, 11th Dist. Ashtabula No. 2004-A-0044, 2005-Ohio-4657, ¶ 23. Therefore, probable cause and an exigent circumstance is required to effectuate a warrantless entry of a home. *State v. Rowley*, 12th Dist. Clinton No. 2021-08-027, 2022-Ohio-997, ¶ 14. Probable cause is “ ‘defined as a reasonable ground of suspicion that is supported by facts and circumstances, which are sufficiently strong to warrant a prudent person in believing that an accused person had committed or was committing an offense.’ ” *State v. Butcher*, 4th Dist.

Washington No. 11CA18, 2012-Ohio-3836, ¶ 11, quoting *State v. Jones*, 4th Dist. Washington No. 03CA61, 2004-Ohio-7280, ¶ 40.

{¶32} Probable cause and exigent circumstances are considered under the totality-of-the-circumstances and viewed with an objective standard. See *State v. Elmore*, 111 Ohio St.3d 515, 2006-Ohio-6207, 857 N.E.2d 547, ¶ 39; See also *Jackson*, __ Ohio St.3d __, 2022-Ohio-4365, __ N.E.3d __, ¶ 16 (“[A]n officer’s intent is determined through an objective inquiry.”) See also *State v. Simmons*, 4th Dist. Highland No. 05CA44, 2006-Ohio-953, ¶ 39 (When “determining whether the totality of the facts and circumstances known to an officer give rise to a reasonable belief that immediate entry is necessary, we must apply an objective standard.”)

III. *Caniglia v. Strom*

{¶33} In support of his argument that the exigent circumstance community-caretaking exception does not apply, Pine relies on the decision in *Caniglia v. Strom*, __ U.S. __, 141 S.Ct. 1596, 1598, 209 L.Ed.2d 604 (2021). Pine interprets the United States opinion as “explicitly” holding “that the community caretaking exception *cannot* be used to justify a warrantless search of a home under the Fourth Amendment to the United States Constitution.” (Emphasis sic.) We disagree with Pine’s overreach reading of the *Caniglia* opinion.

{¶34} In *Caniglia*, Edward Caniglia’s wife contacted the police to conduct a welfare check on him after she was unable to reach him. *Id.* at 1598. The wife was concerned because the previous night Caniglia retrieved a handgun from the

bedroom, placed it on the dining table, and requested for his wife to shoot him. *Id.* Caniglia denied he was suicidal to law enforcement and agreed to go to the hospital only after law enforcement promised not to confiscate his firearms. *Id.* However, after Caniglia was transported to the hospital, law enforcement entered the home and confiscated two firearms. *Id.* Caniglia filed a civil action claiming a violation of his Fourth Amendment right against unreasonable search and seizure. *Id.*

{¶35} In support of their request for summary judgment, the law enforcement officers in *Caniglia* defended their action of removing the two firearms as falling within the premises of a “community-caretaking exception” to the warrant requirement pursuant to *Cady v. Dombrowski*, 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973). In *Cady*, the Supreme Court held that the Fourth Amendment was not violated when law enforcement conducted a warrantless search of a vehicle for an unsecured firearm. *Id.* at 441. The District Court in *Caniglia* granted respondents’ motion for summary judgment and the First Circuit Court of Appeals affirmed on the ground that their action “fell within a ‘community caretaking exception’ to the warrant requirement.” *Caniglia*, __ U.S. __, 141 S.Ct. 1596, 1598, 209 L.Ed.2d 604 (2021). The issue before the United States Supreme Court in *Caniglia* was whether “*Cady*’s acknowledgment of these ‘caretaking’ duties creates a standalone doctrine that justifies warrantless searches and seizures in the home.” *Id.* The Supreme Court distinguished *Cady* in which the warrantless search was of an impounded vehicle, not a home, which is a “constitutional difference.” *Id.* at 1599. The Supreme Court had an issue

with the First Circuit’s “free standing community-caretaking exception that applies to both cars and homes.” *Id.* at 1598. The Supreme Court thus held that

What is reasonable for vehicles is different from what is reasonable for homes. *Cady* acknowledged as much, and this Court has repeatedly “declined to expand the scope of ... exceptions to the warrant requirement to permit warrantless entry into the home.” *Collins*, 584 U.S., at ___, 138 S.Ct. at 1672.

Id. at 1600.

{¶36} Pine concludes an all-encompassing interpretation of the *Caniglia* opinion, which is that the community-caretaking exception can never be applied to a warrantless entry into a home. We disagree with Pine’s interpretation and find the concurring opinions instructive and supportive of our conclusion that the United States Supreme Court in *Caniglia* had an issue with the lower courts applying the exception as a standalone doctrine when officers are not acting in a criminal law enforcement task.

{¶37} Chief Justice Roberts, with whom Justice Breyer joins, concurs with the opinion but wrote separately to expound on

“[t]he role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties.” *Brigham City v. Stuart*, 547 U.S. 398, 406, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006). A warrant to enter a home is not required, we explained, when there is a “need to assist persons who are seriously injured or threatened with such injury.” *Id.*, at 403, 126 S.Ct. 1943[.]

Id. at 1600 (Roberts, C.J., concurring).

{¶38} Justice Alito reiterated that “there is no special Fourth Amendment rule for a broad category of cases involving ‘community caretaking.’ As I understand the term, it describes the many police tasks that go beyond criminal

law enforcement.” *Id.* at 1600 (Alito, J., concurring). In his concurring opinion, Justice Kavanaugh agreed that

Over the years, many courts, like the First Circuit in this case, have relied on what they have labeled a “community caretaking” doctrine to allow warrantless entries into the home for a non-investigatory purpose, such as to prevent a suicide or to conduct a welfare check on an older individual who has been out of contact. But as the Court today explains, any such standalone community caretaking doctrine was primarily devised for searches of cars, not homes.

* * * The Court’s Fourth Amendment case law already recognizes the exigent circumstances doctrine, which allows an officer to enter a home without a warrant if the “exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” *Brigham City*, 547 U.S. at 403, 126 S.Ct. 1943 (internal quotation marks omitted)[.]

Id. at 1603 (Kavanaugh, J., concurring).

{¶39} Since *Caniglia* was decided, we continued to state that “ ‘one such exception to the Fourth Amendment’s warrant requirement is the community-caretaking exception[.]’ ” *State v. Brandau*, 4th Dist. Jackson No. 19CA8, 2022-Ohio-3688, ¶ 18, quoting *State v. Markins*, 4th Dist. Scioto No. 10CA3387, 2013-Ohio-602, ¶ 20. Further, in *Rowley*, a decision announced after *Caniglia*, the Twelfth District Court of Appeals found the warrantless entry into Rowley’s residence met the community-caretaking exception in which the officers were responding to a domestic dispute and entered to check on the victim. *Rowley*, 12th Dist. Clinton No. 2021-08-027, 2022-Ohio-997, ¶ 20 (“we conclude that the officers’ warrantless entry was not only permissible, it was necessary.”)

{¶40} We find the Maryland Special Court of Appeals decision in *Green v. State* persuasive in which the court held:

As the State argues, we are here presented with an overlap of the emergency aid and public welfare concepts. In contrast with *Caniglia*, what began in this case was police response to a report of probable criminal activity, which at the outset may well have not justified a warrantless entry into the apartment. However, as the circumstances unfolded there arose a community caretaking component – the probability that the reported gunshots were fired from the apartment and the discovery by police that there were unattended young children in the apartment. We have found no authority, and none has been presented, that precludes a finding that, in a given situation, what began as a criminal investigation cannot take on a community caretaking function as a component of the initial response.

MD App. No. 723, 2022 WL 193375, *5 (January 21, 2022).

{¶41} Similarly, we find *Caniglia* distinguishable and not prohibitive of applying the community-caretaking exception in this case. *Caniglia* involved a welfare check, not law enforcement deputies at the scene responding to a 9-1-1 criminal investigation call. In addition, after *Caniglia* was removed, there was no evidence that there was a risk of anyone taking possession of the firearm. In the matter at bar, however, the deputies were dispatched on a report of domestic violence, observed the injuries sustained by Chelsea, were informed that Pine, who has felony convictions and is on disability, placed an unsecured, loaded firearm under the trailer, which is located next door to Chelsea's parents whom Pine claimed steal his belongings. Accordingly, the deputies' presence began in response to a criminal investigation and then they took on a community-caretaking function. The question, thus, is whether the state met its burden to demonstrate that the exigency of the situation compelled Deputy Riege to conduct the warrantless search. See *Mincey*, 437 U.S. 385, 393-394, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978).

IV. Analysis

{¶42} The Sixth Circuit Court of Appeals emphasized that

it is necessary “first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen,” for there is “no ready test for determining reasonableness other than by balancing the need to search [or seize] (sic.) against the invasion which the search [or seizure] (sic.) entails.” *Camara v. Municipal Court*, 387 U.S. 523, 534-535, 536-537, 87 S.Ct. 1727, 1735, 18 L.Ed.2d 930 (1967). *Terry v. Ohio*, *supra* at 20, 21, 88 S.Ct. at 1879.

U.S. v. Preston, 468 F.2d 1007, 1010 (6th Cir.1972).

{¶43} We have similarly stated that “[i]n determining whether the warrant and probable-cause requirement are impracticable in a given set of circumstances, courts must ‘balance the governmental and privacy interests to assess the practicality of the warrant and probable-cause requirements in the particular context.’ ” *State v. Howell*, 4th Dist. Jackson No. 97CA824, 1998 WL 80780, *3 (Nov. 17, 1998), quoting *Skinner v. Railway Labor Executives’ Assn.*, 489 U.S. 602, 619, 109 S.Ct. 1402, 103 L.Ed.2d 639 (1989). “In their community caretaking roles, officers may intrude on a person’s privacy to carry-out community-caretaking functions to enhance public safety.” *State v. Sturgill*, 5th Dist. Ashland No. 22-COA-011, 2022-Ohio-4574, ¶ 21, citing *State v. Stanberry*, 11th Dist. Lake No. 2002-L-028, 2003-Ohio-5700. And “ [t]he key to such permissible police action, is the reasonableness required by the Fourth Amendment.’ ” *Id.*, quoting *Stanberry* at ¶ 23.

{¶44} Deputy Riege searched for the weapon in order to make certain no one would retrieve it, and based on the totality-of-the-circumstances, we find the warrantless search for the unsecured AR-15 firearm with a loaded magazine was

reasonable and did not violate Pine's Fourth Amendment right. The trial court factually determined that: "in this case it wasn't a long lapse of time, the firearm would have been accessible (sic.) uh, perhaps to others, certainly to children, certainly to other people in the neighborhood." The trial court's factual determination is consistent with competent, credible evidence. Moreover, we conclude that as the circumstances unfolded, the deputies had probable cause to conduct a warrantless search for the loaded AR-15 firearm pursuant to the community-caretaking exigent circumstance as supported by the following known facts prior to Deputy Riege's search and seizure of the firearm:

- Chelsea had redness on her neck consistent with the allegation that Pine grabbed her by the throat.
- The physical altercation progressed to where Pine grabbed his AR-15 firearm, was loading it and had a magazine.
- Pine pointed the firearm at Martha and threatened her.
- Pine has several felony convictions and is under disability.
- Pine informed others that he was not leaving without a fight.
- Pine was seen crawling under the trailer with the loaded firearm and a magazine.
- Pine's parents came to his aid when he called them by driving from their residence that his mom claimed was far away.
- Pine's parents approached the back side of Pine's trailer and stood within a few feet from the opening in which Pine was hiding.

- Pine's father questioned Pine's sincerity when he said he did not have the firearm under the trailer.
- Chelsea's parents live next door within 100 feet of full view of Pine's trailer. According to Pine, they have previously stolen his belongings.
- Before the deputies arrived, Martha removed one of Pine's magazines from his trailer without his consent.
- The trailer is close to the road and has no fencing around it.
- More than ten adults and one minor child were aware that the firearm was under the trailer. (Chelsea, Chelsea's parents, daughter, sister, aunt and uncle, an unidentified male at the scene, Pine, and Pine's parents.)
- Martha more than once offered to crawl under the trailer and retrieve the firearm for the deputies.

{¶45} Based on the totality-of-the-circumstances, we conclude that it was reasonable and objectively necessary for the deputies to immediately seize the unsecured, loaded firearm. The search was reasonable in duration, in which Deputy Riege's search of all openings under the trailer was for less than four minutes, and was reasonable in process in which Deputy Riege did not manipulate any of the openings and simply used a flashlight.

{¶46} We caution that this court's decision here does not deviate from the legal authority that "the mere fact that a firearm may be located within a private home is not, by itself, sufficient to create an exigent or emergency circumstance." *State v. Sharpe*, 174 Ohio App.3d 498, 2008-Ohio-267, 882 N.E.2d 960, ¶ 50 (2d

Dist.) But under the totality-of-the-circumstances here, Pine physically assaulted Chelsea, is on disability, was in possession of a loaded AR-15 firearm, hid the loaded firearm under the unfenced trailer, the firearm was unsecured, and within 100 feet of adults and a minor, who knew it was there, and, according to Pine, had previously stolen items from him. Thus, in the case at bar, the deputies had probable cause and did not rely on their community-caretaking function as a standalone reason to conduct the warrantless search for the loaded AR-15 firearm that posed an immediate threat of serious consequence of injury. Wherefore, Pine's Fourth Amendment right against unreasonable search and seizure was not violated.

{¶46} Having determined that the community-caretaking exigent circumstance was demonstrated by the state and supports the trial court's decision to deny Pine's motion to suppress, we need not address the alternative exception of plain view. See *State v. Brown*, 10th Dist. Franklin No. 18AP-754, 2019-Ohio-3160, ¶ 24 (after determining that Brown's encounter with law enforcement was consensual, the court declined to address the alternative argument based on investigatory stop exception.)

{¶47} Accordingly, we overrule Pine's assignment of error and affirm the trial court's denial of his motion to suppress. Pine's conviction and sentence are upheld.

CONCLUSION

{¶48} Having overruled Pine's assignments of error, we affirm the trial court's judgment entry of conviction.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J. and Hess, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.