LEGAL UPDATE
City of Madison Police Department
Summer 2021 Assistant Chief Victor Wahl

# *Warrantless Entries*

***Caniglia v. Strom,* 141 S.Ct. 1596 (2021); Decided May 17, 2021 by the United States Supreme Court.**

***Lange v. California*, 141 S.Ct. 2011 (2021); Decided June 23, 2021 by the United States Supreme Court.**

Two recent United States Supreme Court decisions address officers' authority to make warrantless entries.

***Community Caretaker***

In *Caniglia,* a married couple were in an argument; the husband placed a handgun on a table and asked his wife to shoot him and "get it over with." She left for the night, but was unable to get in touch with her husband the next morning. So, she called police to request that they check the welfare of her husband. Officers responded (with the wife) and spoke to the husband on the home's porch. They eventually persuaded him to go to the hospital for a psychiatric evaluation, but only after they allegedly promised not to confiscate his firearms. After the husband was conveyed from the scene (by ambulance), the officers entered the home and collected two handguns.

The husband sued the officers, claiming that they violated the Fourth Amendment by entering his home and seizing his firearms. The officers argued that their actions had been justified under the Community Caretaking doctrine, and the case reached the United States Supreme Court.

Before getting to the result in the *Caniglia* case, recall that there are several categories of warrantless entries, and understanding these provides important context to the *Caniglia* ruling.

The primary category of warrantless entries is when **exigent circumstances** are present. In these situations, officers are acting in the context of a criminal investigation. Probable cause (to arrest or search) **and** exigent circumstances must be present to permit a warrantless entry. Exigent circumstances are generally defined as a "compelling need for official action and no time to secure a warrant." They fall into four categories:

- An arrest/entry made in hot pursuit
- A risk that evidence will be destroyed
- A threat to the safety of the suspect or others
- A likelihood that the suspect will flee

The most commonly seen categories of exigency are hot pursuit and preventing the destruction of evidence. Evaluating an entry under any of these categories requires a detailed analysis of the facts, and hundreds of court decisions have weighed in on the reasonableness of warrantless entries—motivated by a criminal investigation—pursuant to exigent circumstances.

A second category of warrantless entry is the **emergency doctrine**, or emergency aid exception. This allows officers to make a warrantless entry "to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." It does not require any nexus to a crime or criminal investigation. While probable cause is not relevant, courts will be cognizant of the probable cause standard when evaluating an entry under the emergency doctrine:

> Although the 'totality of the circumstances' analysis…applies to situations involving the traditional probable cause determination, it is also relevant to an analysis of whether a reasonable person would have believed, under the totality of the circumstances, that there was an immediate need to render aid or assistance due to actual or threatened physical injury, and that immediate entry was necessary."
> *State v. Bogess*, 115 Wis.2d 443 (1983).

A third general category of warrantless entry has been referred to as the **community caretaker** exception. The United States Supreme Court first recognized the concept in *Cady v. Dombrowski*, 413 U.S. 433 (1973), a case involving an officer checking a vehicle for a firearm. Courts evaluate the reasonableness of a community caretaker action by balancing the public good arising form the caretaker activity against the resulting intrusion into individual privacy. Four factors are generally considered:

1) The degree of public interest and the exigency of the situation.
2) The attendant circumstances surrounding the seizure, including time, location, the degree of overt authority and force displayed.
3) Whether an automobile is involved.
4) The availability, feasibility, and effectiveness of alternatives to the type of intrusion actually accomplished.

Wisconsin courts have applied the community caretaking exception to a variety of situations, and have ruled that it can apply to vehicles or dwellings.

Which brings us back to *Caniglia*. While many federal courts—like Wisconsin courts—have expanded the scope of the community caretaker exception to dwellings over the years, the U.S. Supreme Court had never addressed that issue. The *Caniglia* court unanimously ruled that the community caretaker exception—as outlined in *Cady*—does **not** apply to warrantless entries of a home:

> 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.

So what does this mean moving forward? First, warrantless entries based on exigent circumstances (in the context of a criminal investigation) are unaffected by the *Caniglia* ruling. And, any warrantless entry into a home can never be justified as a "community caretaker" action. Beyond that, however, things are a little murky.

Courts have recognized that there has not always been a clear boundary between the categories of warrantless entries: "[T]here is some degree of overlap between the doctrines (and) the distinctions between them are not always clear." *Sutterfield v. City of Milwaukee*, 751 F.3d 542 (7th Cir.2014). In particular, the line between the emergency doctrine and the community caretaker doctrine has been somewhat imprecise. Officers in Wisconsin have generally seemed to articulate the community caretaker exception much more frequently than the emergency doctrine. Wisconsin Courts have blurred these lines as well, with seemingly far more cases assessing warrantless entries under the community caretaker doctrine than under the emergency doctrine.

However, many warrantless entries that we have previously justified as community caretaker actions will still be permitted under the emergency doctrine. The Wisconsin Supreme Court has articulated that the emergency doctrine allows a warrantless entry when an officer "reasonably believes that a person within is in need of immediate aid or assistance." The Seventh Circuit Court of Appeals has articulated an even broader view of the emergency doctrine:

> (It) recognizes that a warrantless entry into the home may be appropriate when police enter for an urgent purpose other than to arrest a suspect or look for evidence…this doctrine recognizes that police play a service and protective role in addition to a law enforcement role. *Sutterfield*

The *Caniglia* decision was strictly limited to the applicability of the community caretaker doctrine to the officers' actions. The court did not address whether the emergency doctrine (or some other legal justification) might have applied. The case was returned to lower courts for further consideration.

Finally, the community caretaker doctrine still applies to circumstances other than a warrantless entry to a dwelling. These situations will most often involve vehicles, though could arise in other contexts.

***Hot Pursuit***

In *Lange*, an officer observed a driver playing loud music and repeatedly honking his horn. The officer activated his emergency lights to stop the vehicle (driven by Lange), but the car continued a short distance before pulling into a driveway and then into a garage. The officer exited his vehicle and walked into the garage to contact Lange. Lange showed signs of impairment, and was eventually arrested for OMVWI (a misdemeanor in California, based on Lange's driving history).

Lange challenged his arrest, arguing that the officer's warrantless entry to his garage was unreasonable. State courts disagreed with Lange, ruling that hot pursuit of a misdemeanor suspect always permits an officer to make a warrantless entry. The case reached the United States Supreme Court, and the court disagreed, ruling that hot pursuit of a misdemeanor suspect does not automatically allow an officer to make a warrantless entry.

Prior court decisions have precluded warrantless entries for "minor" offenses. These have generally been defined as ordinance or "nonjailable" offenses. Most courts—including Wisconsin courts—have upheld warrantless entries in hot pursuit of misdemeanor suspects without the need for any additional justification. The *Lange* decision rejected this history, ruling that flight of a misdemeanor suspect might justify—but does not automatically justify—a warrantless entry:

> The flight of a suspected misdemeanant does not always justify a warrantless entry into a home. An officer must consider all the circumstances in a pursuit case to determine whether there is a law enforcement emergency. On many occasions, the officer will have good reason to enter—to prevent imminent harm of violence, destruction of evidence, or escape from the home. But when the officer has time to get a warrant, he must do so—even though the misdemeanant fled.

This, unfortunately, does not provide much useful guidance to officers, and the factors the court outlines have generally been viewed as independent exigencies themselves. The *Lange* decision is not at all clear on what—in addition to hot pursuit of a misdemeanor suspect—is needed to justify a warrantless entry. However, the decision suggests that it isn't much: "we have no doubt that in a great many cases flight creates a need for police to act swiftly." The court emphasized the need for a case-by-case analysis of

misdemeanor hot pursuit cases, while acknowledging "that approach will in many, if not most, cases allow a warrantless home entry." The court pointed out a few benign examples where they felt that a warrantless entry would not be appropriate, and summarized:

> When the totality of the circumstances shows an emergency—such as imminent harm to others, a threat to the officer himself, destruction of evidence, or escape form the home—the police may act without waiting. And those circumstances…include the flight itself. But the need to pursue a misdemeanant does not trigger a categorical rule allowing home entry…absent a law enforcement emergency. When the nature of the crime, the nature of the flight, and surrounding facts present no such exigency, officers must respect the sanctity of the home—which means that they must get a warrant.

While it is not clear how courts will interpret the *Lange* decision moving forward, this language suggests that simply articulating something requiring immediate action—beyond the hot pursuit flight of a misdemeanor suspect—will likely justify a warrantless entry (examples: the person could run out the back of the residence and escape before a perimeter is established; the misdemeanor crime involved some violence or threat of violence; immediate apprehension is needed to preserve evidence; etc.). In most instances, one of these factors will be present (just about every dwelling will have more than one entrance, for example) but officers will need to articulate something beyond the hot pursuit of a misdemeanor suspect to justify a warrantless entry.

Officers' authority to make warrantless hot pursuit entries has always depended on the severity of the underlying offense. The *Lange* decision has simply complicated things when the offense is a misdemeanor. An overview:

- A warrantless entry in hot pursuit of an ordinance violation is never permitted.
- Hot pursuit of a felony suspect will justify a warrantless entry.
- A warrantless entry in hot pursuit of a misdemeanor suspect requires some (but likely not much) additional justification.

The case was returned to the State court to determine whether the officer's entry to the garage was permitted under this new standard.

# *Firearms*

***State v. Christen,* 958 N.W.2d 746 (2021); Decided May 4, 2021 by the Wisconsin Supreme Court.**

In *Christen*, MPD officers responded to a disturbance involving an armed subject. After stabilizing the scene, officers determined that Christen had been involved in a disturbance with his two roommates and two other subjects. During the incident, Christen had armed himself with both a handgun and shotgun. Officers noted obvious signs of intoxication, and Christen was ultimately arrested. He was later charged with three crimes: pointing a firearm at another (§941.20(1)(c)); operating or going armed with a firearm while intoxicated (§941.20(1)(b)); and disorderly conduct (§947.01).

Christen claimed he had acted in self-defense, and the case proceeded to a jury trial. The jury rejected his self-defense claim, and Christen was convicted of counts two and three (operating or going armed with a firearm while intoxicated and disorderly conduct). Christen appealed his conviction on count two (pointing a firearm at another—§941.20(1)(c)), claiming that it violated his Second Amendment constitutional right.

The Wisconsin Supreme Court disagreed, and concluded that the application of §941.20(1)(c) to Christen was constitutional. The Court ruled that §941.20(1)(c) "is substantially related to the important government objective of protecting public safety;" and noted that Christen had been intoxicated (not merely consuming alcohol), had not been alone at the time of the violation (putting others at risk), and that the jury had expressly rejected his self-defense claim.

Great tactical response and investigation by the MPD personnel involved in this case. Thanks to: Sergeant Nate Becker, Investigator Joel Holum, Detective Ed Bernards, and Officers Eric Pray, Doroteo Cano, Andres Rivera, Kelly Powers, and Nick Pine.

# *Miranda*

***State v. Halverson,* 395 Wis.2d 385 (2021); Decided January 29, 2021 by the Wisconsin Supreme Court.**

The issue in *Halverson* was whether an incarcerated subject (convicted and serving a sentence) is always considered to be in custody for *Miranda* purposes. Halverson was serving a sentence at a state correctional facility. An officer was investigating an allegation that Halverson had stolen and destroyed some documents from another inmate. Halverson had been transferred to another facility, and the officer attempted to speak to him by phone. Staff contacted Halverson, he called the officer back and was questioned over the phone. During the short (less than five minutes) conversation Halverson admitted taking the documents and destroying them. He was later charged with theft and criminal damage to property.

Halverson sought to suppress the contents of his phone conversation with the officer, arguing that it was a custodial interrogation and that he should have been informed of his *Miranda* rights.

In 1991, the Wisconsin Supreme Court ruled that "a person who is incarcerated is *per se* in custody for purposes of *Miranda*." *State v. Armstrong* 223 Wis.2d 331 (1999). However, the United States Supreme Court later addressed the same issue in *Howes v. Fields*, 132 S.Ct. 1181 (2012). The *Howes* decision clearly rejected the notion that all questioning of an incarcerated prisoner is custodial. Instead, the circumstances of any questioning of a prisoner must be evaluated to determine whether it is custodial:

> When a prisoner is questioned, the determination of custody should focus on all of the features of the interrogation. These include the language that is used in summoning the prisoner to the interview and the manner in which the interrogation is conducted.

The *Halverson* court concluded that *Howes* had overruled Wisconsin's *per se* custody rule for questioning prisoners. Instead, the totality of the circumstances surrounding the questioning must be evaluated to determine whether the encounter was custodial. Since an inmate obviously lacks freedom of movement while incarcerated, the main issue will be whether the environment that the questioning took place in presents the "same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." The court observed that the circumstances of the interview did "not reveal any restraint upon Halverson any more than in his daily life as an inmate." He had not been required to call the officer back, had not been restrained or handcuffed, and was alone in the jail's community room—that doubled as a library—during the call.

An important factor in the *Howes* case was that the officers told the suspect that he did not need to speak with them and could return to his cell at any time, and repeated this multiple times during the questioning. While the officer did not advise Halverson of this, the Court indicated that this notification was "relevant to the inquiry, but it is not mandatory." Returning the call was optional in the first place, the call was short, and the officer spoke in a calm and neutral tone during the interview. The Court concluded, "a reasonable person would have felt free to terminate the interview by hanging up the phone at any time."

The *Halverson* court concluded that the short phone conversation with the officer did not constitute custodial interrogation and that his statements were admissible.

Remember that the holdings in *Howes* and *Halverson* are focused on inmates—those who have been convicted of a crime and are serving their sentence. Individuals who are incarcerated awaiting trial or for other reasons should be considered in custody for *Miranda* purposes. If seeking to interview an incarcerated inmate without *Miranda*, officers should make it clear that the inmate is not obligated to speak to them and can return to his/her cell at any time; and will need to ensure that the environment in which the interview takes place is consistent with (and no more coercive than) the inmate's day-to-day confinement. If in doubt, or if this information is not readily available, providing *Miranda* is the safest option.

# *Traffic Stops*

***State v. Brown,* 392 Wis.2d 454 (2020); Decided July 3, 2020 by the Wisconsin Supreme Court. [summary prepared by the City Attorney's Office]**

In *Brown*, an officer made a traffic stop for a minor violation. The driver (Brown) was driving from a commercial business area that had a dead end and did not stop at a stop sign. The officer asked Brown where he was going, and Brown provided inconsistent responses. The officer returned to his vehicle to complete a citation, and noted a significant criminal history for Brown (including drug and armed robbery arrests). The officer completed the citation and returned to Brown's vehicle.

Once back at the vehicle, the officer—with citation in hand—asked Brown to step out of the car. Brown gave the officer consent to search his person, and the officer discovered cocaine and cash. Brown was arrested and charged with possession with intent to deliver crack cocaine as a repeater.

Brown moved to suppress the evidence found during the search, claiming that because the search occurred after the citation was completed, the search unlawfully extended the length and scope of the stop. Lower courts disagreed and the case reached the Wisconsin Supreme Court.

In previous cases, the Court has addressed the permissible duration of a traffic stop, concluding that the "mission" of a traffic stop includes:

- Addressing the traffic violation that warranted the stop.
- Conducting ordinary inquiries incident to the stop.
- Taking negligibly burdensome precautions to ensure officer safety.

The duration of a stop will be impermissible if it extends beyond the point where the mission is completed, or reasonably should have been completed. This includes completing and explaining a citation.

The *Brown* Court concluded that the officer's search did not unreasonably prolong the duration of the stop and was reasonable. Asking Brown to exit the vehicle and the subsequent consensual search were consistent with reasonable officer safety precautions. And, because the officer still had the citation and Brown's driver's license in his possession, the "mission" of the traffic stop was uncompleted.

Clearly, an officer cannot indefinitely extend the duration of a stop by simply holding on to a completed citation. However, issuing and explaining a citation (or warning) is part of the scope/mission of a traffic stop, and reasonable investigative efforts—including officer safety precautions—up to that point are acceptable.

Courts have also ruled that questioning and investigation unrelated to the stop's mission are permitted as long as they do not measurably extend the duration of the stop. An example would be a stop based on reasonable suspicion of a traffic violation where an officer asks questions about other criminal activity. The best way to approach this is to have one officer performing steps related to the "mission" of the traffic stop while another asks questions about other activity.

# *Seizures*

***Torres v. Madrid,* 141 S.Ct. 989 (2021); Decided March 25, 2021 by the United States Supreme Court.**

In *Madrid*, the Supreme Court answered the seemingly obvious question of whether shooting someone is considered a "seizure" under the Fourth Amendment. Officers had approached a vehicle in a parking lot while seeking to serve an arrest warrant. The vehicle accelerated rapidly, and two officers fired thirteen shots at the driver (Torres). Torres was hit twice, but continued driving, eventually making it to a hospital for medical treatment. She was located and arrested the next day. Torres sued the officers, claiming that they had used excessive force, and the case reached the United States Supreme Court.

The Court had previously addressed the definition of "seizure" in *California v. Hodari D.*, 111 S.Ct. 1547 (1991). In that case, a juvenile fled on foot from police and was eventually caught, tackled, and arrested. The juvenile discarded some cocaine while fleeing, and officers later recovered it. The question for the court was when precisely the juvenile had been "seized" under the Fourth Amendment (when the officers told him to stop or when they tackled him). The *Hodari D.* court ruled that a seizure requires the "application of physical force to restrain movement, even when it is ultimately unsuccessful" or a "show of authority" that the suspect complies with. So, he had not been seized until he was tackled. Physical contact with a suspect is considered a seizure, even if the suspect pulls away and escapes; but a verbal command to stop is not considered a seizure unless the suspect complies.

The lower court in the *Madrid* case had ruled that the shooting had not been a Fourth Amendment seizure, since there had been no physical contact with or compliance by the suspect. The Supreme Court disagreed, concluding that shooting someone qualifies as applying physical force, so that the officers had seized Torres when they shot her: "the application of physical force to the body of a person with intent to restrain is a seizure even if the person does not submit and is not subdued."

The decision emphasized that when a suspect escapes, the "seizure" ends:

> [A] seizure by force—absent submission—lasts only as long as the application of force…the Fourth Amendment does not recognize any '*continuing* arrest during the period of fugivity'…We therefore conclude that the officers seized Torres for the instant that the bullets struck her.

The *Madrid* court also reinforced the concept that a seizure must be intentional:

> [N]ot every physical contact between a government employee and a member of the public (is) a Fourth Amendment seizure. A seizure requires the use of force *with intent to restrain*. Accidental force will not qualify.

This will be evaluated objectively: "the appropriate inquiry is whether the challenged conduct *objectively* manifests an intent to restrain, for we rarely probe the subjective motivation of police officers in the Fourth Amendment context." So, going through a red light and accidentally hitting another vehicle is not a Fourth Amendment seizure, while intentionally ramming a vehicle in a pursuit is a seizure.

The discussion of whether a seizure had occurred was relevant to whether a federal lawsuit—alleging a constitutional violation—was appropriate. Agency policy and state law still apply to officer actions that do not constitute a seizure (driving, for example).