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## **Constitutional Law: State v. Nemeth - The Community Caretaker Exception to the Fourth Amendment**

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# CONSTITUTIONAL LAW: *State v. Nemeth*—The Community Caretaker Exception to the Fourth Amendment

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## I. INTRODUCTION

In *State v. Nemeth*,<sup>1</sup> the New Mexico Court of Appeals established, as a matter of first impression, that community caretaking is an exception to the Fourth Amendment warrant requirement<sup>2</sup> and that non-consensual warrantless entry by police officers into a private residence on information of possible suicide falls within the community caretaking exception. The court held that such warrantless entries by police officers are part of a police officer's role as a community caretaker and consequently, a warrantless entry into a home that passes the community caretaker test<sup>3</sup> is an exception to the Fourth Amendment.

This Note will examine the decision in *Nemeth* in the context of the Fourth Amendment community caretaking exception and the expansion of the doctrine by the New Mexico Court of Appeals. This Note will further address the development of the community caretaking doctrine both as it pertains to Fourth Amendment jurisprudence in general and New Mexico jurisprudence in particular. Additionally, this Note will examine the decision by the New Mexico Court of Appeals to expand the community caretaking exception to situations such as that presented in *Nemeth* and how this decision will impact both future decisions by the Court and the manner in which attorneys litigate such cases.

## II. STATEMENT OF THE CASE

Sandra Nemeth's boyfriend, Mike Wells, called 911 to report Nemeth had just threatened to commit suicide in the course of an argument with him.<sup>4</sup> Officer Lori Phelps and Deputy Terry Eagle responded to the call. Eagle arrived at Nemeth's residence and activated a video camera and a microphone. The officers then attempted to get Nemeth to respond by knocking on the door. She repeatedly opened the door and told officers to leave, stating she was fine. Nemeth was attempting to

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\* Class of 2003, University of New Mexico School of Law. Many people were instrumental in the completion of this Note. I would like to thank Professor Raquel Montoya-Lewis and Professor Leo Romero for all of their time, effort, and suggestions. I would also like to thank Allison Crist for her time and effort, Glenn Smith-Valdez, Esq., on behalf of Sandra Nemeth, for his time and information, and my husband for his support, love, and understanding.

1. 2001-NMCA-029, \_\_\_ N.M. \_\_\_, 23 P.3d 936.

2. The Fourth Amendment 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.

U.S. CONST. amend. IV.

3. "The test of legitimacy under the community caretaker doctrine is whether the officers' actions were objectively reasonable and in good faith." *Nemeth*, 2001-NMCA-029 ¶ 37, \_\_\_ N.M. at \_\_\_, 23 P.3d at 944. The officer must have a reasonable and articulable belief, tested objectively, that a person is in need of immediate aid, assistance, or protection from serious harm. *Id.*

4. Unless otherwise indicated, all factual information is from *Nemeth*, 2001-NMCA-029, \_\_\_ N.M. \_\_\_, 23 P.3d 936.

shut the door once more when Eagle stuck his foot in the door and Phelps forced her way into Nemeth's home.<sup>5</sup>

Nemeth then told officers to leave unless they had a warrant and the officers explained they were concerned for her welfare and were there to check on her because someone had called who was worried about her. Nemeth responded that no one cared about her. The officers then requested identification but she refused to comply. She moved into her kitchen and shouted at officers to get out of her house, saying she was fine and was just angry. The officers moved toward Nemeth until she was near a kitchen counter from which she picked up a small paring knife. She once again told officers to get out of her house. Phelps drew her gun and held it in a low, ready position while Eagle ordered Nemeth to put down the knife. She complied.

Nemeth then informed officers that Mike Wells was on the phone and Eagle spoke with him briefly, during which Eagle ascertained Nemeth's identity. Nemeth, sobbing and emotional, continued to tell officers to leave her house. With her driver's license and identification cards in hand, Nemeth approached Phelps. She shouted, "Eat this, bitch," and shoved the cards into Phelps's mouth, causing a small cut and some swelling.

Nemeth then moved to another room and, after further interaction with the officers, she was arrested.<sup>6</sup> Nemeth was charged by criminal information<sup>7</sup> with two counts of aggravated assault on a peace officer, two counts of battery on a peace officer, attempting to disarm a peace officer, and battery on a household member. The trial court denied Nemeth's motion to dismiss and suppress evidence relating to the alleged battery. The jury returned a verdict of guilty on one count of battery on a peace officer and on the misdemeanor charge of battery on a household member. Nemeth subsequently appealed the denial of the motion to suppress and the verdict of guilt as to battery on a peace officer. The Court of Appeals affirmed, stating the police officers' actions were within the lawful discharge of their duties and were constitutional under the Fourth Amendment and consistent with the New Mexico Constitution.

### III. BACKGROUND

The Fourth Amendment to the United States Constitution states:

[T]he 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,

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5. Officers later testified that they entered Nemeth's home because they were concerned about her welfare. Both officers stated that preservation of life is their most important duty as a police officer, and they would not have been performing their duty had they simply walked away. *Id.* ¶ 8, \_\_\_ N.M. at \_\_\_, 23 P.3d at 939.

6. "The recording reveals that the officers' voices throughout were polite and calm, but firm. [Nemeth] was upset and yelling most of the time, with the exception of a brief period of less than a minute in the middle of the tape when her voice 'calmed briefly.'" *Id.* ¶ 14, \_\_\_ N.M. at \_\_\_, 23 P.3d at 940.

7. Criminal Information is defined as "[a] formal criminal charge filed by a prosecutor without the aid of a grand jury; the information is used for the prosecution of misdemeanors in almost all states, many of which allow its use for felony prosecutions as well." BLACK'S LAW DICTIONARY 783 (7th ed. 1999).

and particularly describing the place to be searched, and the persons or things to be seized.<sup>8</sup>

Generally, searches and seizures within the home without a warrant are per se unreasonable.<sup>9</sup> However, there are a number of exceptions to this amendment, including a group of doctrines known as emergency aid<sup>10</sup> and exigent circumstances<sup>11</sup> exceptions.

#### A. The Fourth Amendment

The Fourth Amendment provides protection of the rights of the people against unreasonable searches and seizures and limits the potentially abusive power of the police. To protect these rights, the Fourth Amendment requires police to have a search warrant,<sup>12</sup> based on probable cause,<sup>13</sup> in order to perform a lawful search and seizure. Generally, the Fourth Amendment prohibits searching a residence without a warrant unless at the time of the search (1) there is probable cause to believe that contraband or evidence of a crime will be found in the residence and (2) exigent circumstances are present.<sup>14</sup> "At the very core of the Fourth Amendment stands the right of a 'person' to retreat into his own home and there be free from unreasonable governmental intrusion";<sup>15</sup> thus, with few exceptions, a warrantless search of a home is unreasonable and unconstitutional.<sup>16</sup>

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8. U.S. CONST. amend. IV. The New Mexico Constitution provision, which offers more extensive protection than the Fourth Amendment to the U.S. Constitution, reads:

The people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures, and no warrant to search any place, or seize any person or thing, shall issue without describing the place to be searched, or the persons or things to be seized, nor without a written showing of probable cause, supported by oath or affirmation.

N.M. CONST. art. II, § 10.

9. *Payton v. New York*, 445 U.S. 573, 586 (1980) (involving a situation in which police entered a residence without a warrant to make a felony arrest).

10. The requirements of the emergency doctrine have been articulated as

(1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property. (2) The search must not be primarily motivated by intent to arrest and seize evidence. (3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.

*People v. Mitchell*, 347 N.E.2d 607, 609 (N.Y. 1976).

11. "Exigent circumstances" are defined as, "Exceptions that rely on the premise that the existence of an emergency situation, demanding urgent police action, may excuse the failure to procure a search warrant. Exigent circumstances justify a warrantless entry into a residence only where there is also probable cause to enter the residence." *United States v. Johnson*, 9 F.3d 506, 508-09 (6th Cir. 1993).

12. "Search warrant" is defined as, "A judge's written order authorizing a law-enforcement officer to conduct a search of a specified place and to seize evidence." BLACK'S LAW DICTIONARY 1353 (7th ed. 1999).

13. "Probable Cause" is defined as, "A reasonable ground to suspect that a person has committed or is committing a crime or that a place contains specific items connected with a crime. 'Probable cause' amounts to more than a bare suspicion but less than evidence that would justify a conviction." BLACK'S LAW DICTIONARY 1219 (7th ed. 1999). Additionally, for "over 75 years, the Supreme Court has stated that probable cause exists when the 'facts and circumstances' before the officer are sufficient to warrant a person of reasonable caution to believe that the items sought will be found in the place to be searched." *Johnson*, 256 F.3d at 905.

14. *United States v. Morales Cervantes*, 219 F.3d 882, 887 (9th Cir. 2000), *cert. denied*, 532 U.S. 912 (2001).

15. *Kyllo v. United States*, 533 U.S. 27, 28 (2001) (citing *Silverman v. United States*, 365 U.S. 505, 511 (1961)) (internal quotes omitted).

16. *Id.* at 28.

The Fourth Amendment's central requirement of reasonableness "is the touchstone of any search,"<sup>17</sup> particularly within the home, because the "right to privacy in the home is certainly a reasonable expectation."<sup>18</sup> "Indeed, the right to be free from unreasonable government intrusion into one's own home is a cornerstone of the liberties protected by the Fourth Amendment."<sup>19</sup> In order to enforce that requirement, the United States Supreme Court has interpreted the Fourth Amendment as establishing rules and presumptions designed to control conduct of law enforcement officers that may significantly intrude upon privacy interests. Commonly, those rules require warrants although the Supreme Court has made it clear that there are exceptions to the warrant requirement.<sup>20</sup> Consequently, the Court has recognized that "[a]n exception exists for emergencies" and has acknowledged "the community caretaking function of police officers [that] exists so officers can assist citizens and protect property."<sup>21</sup>

### *B. The Community Caretaking Doctrine*

The Community Caretaking Doctrine is the most recent exception to the Fourth Amendment warrant requirement.<sup>22</sup> Other exceptions, including the emergency aid doctrine and exigent circumstances exception, have at times been confused with one another. However, case law indicates that the emergency aid doctrine is a subcategory of the community caretaking exception, a distinctly different principle of Fourth Amendment jurisprudence from exigent circumstances.<sup>23</sup>

The community caretaking exception was first articulated under Washington law in *State v. Sanders*,<sup>24</sup> which stated, "Police officers may enter a dwelling without a warrant to render emergency aid and assistance to a person whom they reasonably believe to be in distress and in need of that assistance."<sup>25</sup> This exception applies when (1) the officer subjectively believed that someone likely needed assistance for health or safety reasons, (2) a reasonable person in the same situation would similarly believe that there was a need for assistance, and (3) there was a reasonable basis to associate the need for assistance with the place searched.<sup>26</sup> The Supreme Court of the United States first addressed this issue in *Cady v. Dombroski*,<sup>27</sup> adopting the community caretaking exception as applied to the search of a motor vehicle. The case involved a Chicago police officer involved in a car accident following a night of visiting taverns. Subsequently, the police searched his car, looking for the respondent's service revolver, and found several bloodied items, which were later linked to a body found on respondent's brother's farm. The court

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17. *State v. Clark*, 89 N.M. 695, 697, 556 P.2d 851, 853 (Ct. App. 1976).

18. *United States v. Paige*, 136 F.3d 1012, 1019 (5th Cir. 1995) (citing *Payton*, 445 U.S. at 583).

19. *Id.*

20. *See, e.g., Illinois v. McArthur*, 531 U.S. 326 (2001).

21. *State v. Menz*, 880 P.2d 48, 49 (Wash. Ct. App. 1994).

22. *People v. Ray*, 981 P.2d 928, 942 (Cal. 1999).

23. *Id.* at 933.

24. 506 P.2d 892, 895 (Wash. Ct. App. 1973).

25. *Id.*

26. *Id.*

27. 413 U.S. 433 (1973). In *Cady*, the Court adopted the community caretaking exception as applied to the search of a motor vehicle, reasoning that such a search was reasonable under the Fourth Amendment because of a concern for police and public safety as well as the diminished expectation of privacy in automobiles. *Id.* at 447.

concluded that the search of the Thunderbird was valid, despite the absence of a warrant, because of "concern for the safety of the general public who might be endangered if an intruder removed a revolver from the trunk of the vehicle."<sup>28</sup> Furthermore, the court stated that while the concern for safety may have been handled in a less intrusive manner, the fact that it was not does not render the search unreasonable.<sup>29</sup> The Court further stated that the fundamental nature of the community caretaker exception is that these functions are totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.<sup>30</sup> At the time of the search of the car, the officer was totally unaware that any crime other than the drunk driving charge had occurred. He searched the car only to ensure public safety, fulfilling his role as a community caretaker.<sup>31</sup>

The community caretaking exception adopted by the Supreme Court has subsequently been interpreted in several decisions.<sup>32</sup> In *People v. Mitchell*,<sup>33</sup> the court recognized that "[c]onstitutional guarantees of privacy and sanctions against their transgression do not exist in a vacuum but must yield to paramount concerns for human life and the legitimate need of society to protect and preserve life."<sup>34</sup> The circuit courts, however, have struggled with the application of the exception set out in *Cady*.<sup>35</sup> In the Seventh and Ninth Circuits, the courts have determined that the community caretaking exception was intended to apply only to automobiles because of the lesser privacy attributed to cars.<sup>36</sup> The Tenth Circuit agreed with this interpretation of the community caretaking exception in *United States v. Bute*<sup>37</sup> where the court stated, "We agree with this line of authority holding the community caretaking exception to the warrant requirement is applicable only in cases involving automobile searches."<sup>38</sup> This decision was also based on the idea that homes are afforded additional protections by the Fourth Amendment and, thus, *Cady* did not intend to create a broad exception to the warrant requirement.<sup>39</sup>

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28. *Id.*

29. *Id.*

30. *Id.* at 441.

31. *Id.*

32. Unless otherwise indicated, all cases discussed herein involve the Fourth Amendment of the United States Constitution.

33. 347 N.E.2d 607 (N.Y. 1976).

34. *Id.* at 611.

35. 413 U.S. 433 (1973).

36. See *United States v. Pichany*, 687 F.2d 204 (7th Cir. 1982) (holding the community caretaking exception alone did not justify a search of a warehouse in the investigation of a burglary); *United States v. Erickson*, 991 F.2d 529 (9th Cir. 1993) (holding the community caretaking function did not justify entering defendant's home without a warrant to investigate a burglary).

37. 43 F.3d 531 (10th Cir. 1994).

38. *Id.* at 535.

39. *Id.*

### C. The Community Caretaking Doctrine in New Mexico

The community caretaking doctrine first took root in New Mexico in *State v. Reynolds*,<sup>40</sup> which involved the police stopping a moving truck for safety concerns. In *Reynolds*, a New Mexico State Police officer stated he stopped the vehicle because of safety concerns raised by three individuals sitting on the tailgate of a moving truck.<sup>41</sup> After pulling the vehicle over, the officer asked the driver for identification as he administered a safety warning regarding the passengers on the tailgate. The driver produced a valid Florida driver's license but, as the interaction continued, the officer testified he began to feel a bit unsafe due to the presence of the three hitchhiker-passengers, the traffic on the highway, and the difficulty the driver was having in locating the vehicle registration. Based on this feeling, the officer requested identification from all individuals in the vehicle. Upon obtaining these, the officer ran warrant checks on all of the passengers. It was determined that the vehicle was stolen and the officer arrested the defendants.

In *Reynolds*, the court declared it is appropriate for officers to stop vehicles for a specific, articulable safety concern.<sup>42</sup> The court further stated that part of the function of police officers is to carry out community caretaking functions to enhance public safety,<sup>43</sup> and on appeal in *Reynolds*, the New Mexico Supreme Court affirmed the role of the police as community caretakers.<sup>44</sup>

In the wake of *Reynolds*, the community caretaking doctrine has been expanded in New Mexico. Post-*Reynolds*, in *State v. Walters*,<sup>45</sup> the New Mexico Court of Appeals stated that "[c]ase law recognizes three types of police-citizen encounters: (1) arrests, which require probable cause; (2) investigative stops, which require reasonable suspicion; and (3) community caretaking encounters."<sup>46</sup> The first two are seizures invoking constitutional protections while the third is an encounter involving no coercion or detention and thus falls outside the Fourth Amendment. The New Mexico Supreme Court reiterated this concept in a later case, *State v. Jason L.*,<sup>47</sup> stating, "Arrests and investigatory stops are seizures invoking Fourth Amendment protections; community caretaking encounters are consensual, beyond the scope of the Fourth Amendment."<sup>48</sup> It has now been recognized, however, that many community caretaker actions are in fact coercive and therefore do implicate the

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40. 117 N.M. 23, 868 P.2d 668 (Ct. App. 1994), *rev'd on other grounds*, 119 N.M. 383, 890 P.2d 1315 (1995). The case reversed the suppression by the Court of Appeals of evidence obtained with the search warrant. The Court of Appeals suppressed evidence, saying the length of the detention was too long to be reasonable under the Fourth Amendment. The New Mexico Supreme Court reversed, concluding the stop was valid, whether it was to enforce traffic laws or to promote safety under the community caretaking function. Thus, the detention to obtain drivers licenses, insurance, and registration information was not unreasonable under the Fourth Amendment.

41. Factual information in this paragraph comes from *Reynolds*, 117 N.M. at 24-25, 868 P.2d at 669-70.

42. *Id.* at 26, 868 P.2d at 671.

43. *Id.* at 25, 868 P.2d at 670. A similar holding was also reached in *Apodaca v. Taxation & Revenue Dep't*, 118 N.M. 624, 884 P.2d 515 (Ct. App. 1994).

44. *Reynolds*, 119 N.M. at 388, 890 P.2d at 1320.

45. 123 N.M. 88 934 P.2d 282 (1997).

46. *Id.* at 91, 934 P.2d at 285.

47. 129 N.M. 119, 2 P.3d 856 (2000).

48. *Id.* at 123, 2 P.3d at 861.

Fourth Amendment, thus creating the necessity for a community caretaker exception to the Fourth Amendment warrant requirement.<sup>49</sup>

#### IV. RATIONALE

Prior to the decision in *Nemeth*, New Mexico community caretaker case law followed previous federal Fourth Amendment jurisprudence and was limited to police-vehicle encounters in which the officer's specific, articulable concern is for the safety of the occupants of the vehicle, not a violation of the law. The court acknowledged that *Nemeth* presented a very different case. None of the previous community caretaker cases involved the entry into an individual's home to render assistance for a possible suicide, and since the highest reasonable expectation of privacy is within the home, this case represents an important expansion of the community caretaker doctrine. The court in *Nemeth* set out to determine whether the warrantless entry into a home on the basis of a possible suicide was an appropriate expansion of the community caretaker doctrine.<sup>50</sup>

##### A. The Community Caretaker Exception and Entry into the Home

The court in *Nemeth* acknowledged that New Mexico has recognized a community caretaker doctrine as stated in *Reynolds*.<sup>51</sup> The *Nemeth* court stated that "the officers were acting pursuant to a 911 call regarding a possible suicide threat" and "were motivated solely to check on a person's welfare and to assist a person in need."<sup>52</sup> The officers "were not engaged in any sort of criminal investigative activity" or concerned about criminal activity in any way.<sup>53</sup> These actions therefore fell "within a police officer's community caretaker function, which is, broadly stated, to render aid and assistance to those in need."<sup>54</sup>

The court recognized that other jurisdictions have dealt with the community caretaker exception in several ways. Some jurisdictions have characterized caretaker activities as "exigent circumstances," "emergency aid or assistance," or "community caretaker."<sup>55</sup> The court in *Nemeth* added that a response by law enforcement officers to a call seeking assistance in regard to a possible suicide inside a home can be characterized as rendering aid or assistance under either the emergency aid or community caretaker doctrines.<sup>56</sup> The distinguishing features of these doctrines are very subtle and appear to indicate a meaningless distinction. Hence, the activity falls within a more generic community caretaking function. The court continued, stating,

[T]he primary characteristic of community caretaking that sets this function apart from criminal investigative and enforcement activity is the absence of

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49. *State v. Nemeth*, 2001-NMCA-029, \_\_\_ N.M. \_\_\_, 23 P.3d 936 (stating that an exception to the Fourth Amendment was carved out in *Cady* indicating that not all community caretaking situations are consensual and non-coercive).

50. *Id.*

51. *Id.* ¶ 22, \_\_\_ N.M. at \_\_\_, 23 P.3d at 941.

52. *Id.* ¶ 21, \_\_\_ N.M. at \_\_\_, 23 P.3d at 941.

53. *Id.*

54. *Id.*

55. *Id.* ¶ 32, \_\_\_ N.M. at \_\_\_, 23 P.3d at 943.

56. *Id.* ¶ 36, \_\_\_ N.M. at \_\_\_, 23 P.3d at 944.



concern about violations of law on the part of the law enforcement officer. As long as the facts of a particular case meet the test for the community caretaking function that we set out below, that function can properly take its place in our jurisprudence as an exception to the Fourth Amendment warrant requirement.<sup>57</sup>

### *B. The Test for the Community Caretaking Exception*

The reasonableness principle of the Fourth Amendment governs any intrusion into a home under a community caretaker exception.<sup>58</sup> The test of legitimacy under the community caretaker doctrine, based on several decisions from other states,<sup>59</sup> is whether the officers' actions were objectively reasonable and in good faith. Specifically, the officer must have a reasonable and articulable belief, tested objectively, that a person is in need of immediate aid or assistance or protection from serious harm.<sup>60</sup>

Additionally, the court stated that in order to come under the exception, the officer must act in good faith, having no pretextual reasons, such as obtaining incriminating evidence, in entering the home. The sole motivation for entering the dwelling must be a non-criminal-related community caretaking function, and the officer can do no more than what is reasonably necessary to determine whether someone needs assistance and to provide that assistance.<sup>61</sup>

The Court stated that the conduct in this case fell within the community caretaking exception because it met the established test.<sup>62</sup> The Court concluded that "[t]he officers' actions constituted a check on the welfare of a person the officers reasonably believed to be in need of immediate assistance, and a reasonable, limited effort to determine if they could assist that person."<sup>63</sup> There was no indication that the officers were motivated by any criminal investigation or any criminal behavior at all. This is purely a public service that fits directly within a police officer's community caretaking obligations, and thus, the warrantless entry into defendant's home was valid.<sup>64</sup>

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57. *Id.*

58. *Id.* ¶ 37, \_\_ N.M. at \_\_, 23 P.3d at 944.

59. *State v. Carlson*, 548 N.W.2d 138, 140-42 (Iowa 1996) (abandoning a subjective aspect to the reasonableness test under the Fourth Amendment. The court adopted a purely objective test in which reasonableness is determined on the basis of objective circumstances.); *Commonwealth v. Waters*, 456 S.E.2d 527, 530 (Va. Ct. App. 1995) (stating that objective reasonableness remains the linchpin of determining the validity of action taken under the community caretaker doctrine); *People v. Davis*, 497 N.W.2d 910, 921 (Mich. 1993) (stating that test articulated requires a determination of whether the officers possessed a reasonable belief based on specific, articulable facts that someone was in need of immediate aid).

60. *Nemeth*, 2001-NMCA-029 ¶ 37, \_\_ N.M. at \_\_, 23 P.3d at 944.

61. *Id.* ¶ 38, \_\_ N.M. at \_\_, 23 P.3d at 944. *Commonwealth v. Waters* also states these requirements: (1) the officer's initial contact or investigation is reasonable; (2) the intrusion is limited; and (3) the officer is not investigating criminal conduct under the pretext of exercising his community caretaker function. Police officers have an obligation to aid citizens who are ill or in distress, as well as a duty to protect citizens from criminal activity.

456 S.E.2d 527, 530 (Va. Ct. App. 1995).

62. *Nemeth*, 2001-NMCA-029 ¶ 40, \_\_ N.M. at \_\_, 23 P.3d at 944.

63. *Id.*

64. *Id.*

### C. Public Policy

The court also presented a limited discussion of the public policy behind its decision to expand the community caretaking exception to homes. The court recognized that officers have a duty to protect and preserve life but also recognized that law enforcement officers cannot employ this exception to enter homes to investigate suspected criminal activity under a ruse of community caretaking pursuits.<sup>65</sup>

The court clearly limits officers' activities under this exception, stating,

Our application here of the community caretaker doctrine carries with it the expectation that law enforcement officers will continue to carry on such service, while at the same time remain subject to judicial scrutiny to assure that their actions are reasonable and not pretextual, and that their conduct is not outside the bounds of legitimate community caretaker activity.<sup>66</sup>

## V. ANALYSIS AND IMPLICATIONS

The New Mexico Court of Appeals expanded the community caretaker exception to the Fourth Amendment warrant requirement in *Nemeth*. This marks both a break from the idea that the doctrine should be confined to an automobile exception<sup>67</sup> and a clear development in Fourth Amendment jurisprudence in New Mexico.<sup>68</sup> This decision is one that will significantly impact constitutional rights and court decisions in the future. The community caretaker doctrine is an important exception to the Fourth Amendment in that it allows police to fully exercise their duty to protect the citizens in their jurisdiction. However, searches and seizures in the home are still presumptively unreasonable, unless the proper showing is made<sup>69</sup> or the conduct comes within a "carefully delineated" exception.<sup>70</sup> Thus, the decision made in *Nemeth* not only recognized the community caretaking exception, it also expanded it to the sacred area of the home on facts that may not be strong support for such an expansion. Despite this, extension of the doctrine is likely appropriate on articulable facts.

### A. The Community Caretaking Doctrine In New Mexico as It Applies to the *Nemeth* Case

The community caretaking function of a police officer is to render aid and assistance to those in need. It is understood that police interactions with citizens are governed by the constitutions of the State of New Mexico and the United States of America and people who are emotional do not lose their rights under either constitution. Although a person may be upset, crying, yelling, and cursing, this conduct alone does not indicate potential suicide. It cannot be ignored, however, that

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65. *Id.* ¶¶ 40-41, \_\_ N.M. at \_\_, 23 P.3d at 945.

66. *Id.*

67. *United States v. Erickson*, 991 F.2d 529, 532 (9th Cir. 1993).

68. Under previous New Mexico jurisprudence, the community caretaker exception applied to police/citizen encounters involving automobiles. *See State v. Reynolds*, 119 N.M. 383, 388, 890 P.2d 1315, 1320 (1995).

69. *Payton v. New York*, 445 U.S. 573, 586 (1980) (requiring warrants to be based on probable cause).

70. *United States v. United States Dist. Court*, 407 U.S. 297, 318 (1972).

this conduct may be illustrative of a serious problem that may lead someone to harm themselves.

In the *Nemeth* case, Nemeth's actions of picking up the paring knife, whether she intended to use it or not,<sup>71</sup> coupled with shoving her license and other cards into Officer Phelps's mouth while screaming, "Eat this, bitch," could be construed to be symptoms of a condition that needed to be addressed immediately.<sup>72</sup> However, as is true for other exceptions to the Fourth Amendment, the officers' entry into the home would not be justified under the community caretaking exception, even if they were acting only to determine whether Nemeth was in need of their aid because these events occurred after the warrantless entry into Nemeth's home. Furthermore, the fact that all of the officers involved conceded that they did not suspect Nemeth of any criminal offense when they entered her home did not justify the entry, because they had no evidence at the time of the warrantless entry to indicate that Nemeth was in need of their assistance. The *Nemeth* court found that the officers were motivated solely by concern for Nemeth's safety and not engaged in any sort of criminal investigation.

Nevertheless, the officers could not be certain why Nemeth initially answered the door upset, although they were aware that she had an argument with Mike Wells prior to the appearance of the police and her conduct could have been attributed to that series of arguments. Additionally, Nemeth could have been upset because of some completely unrelated event,<sup>73</sup> and Nemeth's response to the officers once they entered her home may have been due simply to the invasion of her home. This can best be shown based on the facts Nemeth testified to at trial, which were slightly different than those set forth in the Court of Appeals opinion.<sup>74</sup>

Nemeth testified that she and Wells had arranged to meet earlier that evening for a movie. When Wells did not show up, Nemeth went looking for him and was angry when she found him because he had been drinking. She walked up to him, slapped him, and then left. She went home and drank a beer, and then returned to Wells's home where they argued again. Nemeth took Wells's keys because he was intoxicated and she did not want him to drive. Nemeth went home, had another beer, and continued to argue with Wells over the phone. Nemeth then saw a police car approaching her home and was upset because she felt that the situation between herself and Wells was a private matter.

Nemeth testified that she is a licensed attorney, is admitted to the New Mexico bar, and felt the officers had no legal right or authority to enter her home because they did not have a warrant, probable cause, exigent circumstances, or Nemeth's

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71. There is some contradictory testimony between Deputy Eagle and Officer Phelps. Eagle testified at trial that Nemeth held the knife in her hand but simply stood there while Phelps testified that Nemeth took a step toward the officers with the knife in her hand. Docketing Statement at 11-12, *State v. Nemeth*, 2001-NMCA-029, \_\_ N.M. \_\_, 23 P.3d 936 (No. 20637).

72. Unless otherwise indicated, all factual information in this section comes from Docketing Statement, *Nemeth* (No. 20637).

73. The point that must be made is that the facts presented appear to show that the officers had no idea what the situation was and made little effort to corroborate the information they had. However, being in a potential suicide situation, the officers may have been worried that if they took the time to corroborate the information given to them by Mike Wells, Nemeth may have harmed herself.

74. All testimony in this section comes from the Docketing Statement, *Nemeth* (No. 20637).

consent to enter her home. Nemeth testified that all actions taken that night were in defense of herself and her home and she never would have taken those actions had the officers not entered her home against her wishes. Nemeth also admitted that in picking up the knife she intended to make the officers leave and she further admitted that she did not act rationally at all times during the incident. However, Nemeth felt that while coming to her house and knocking and trying to speak with her was reasonable, the officers' entry of her home was not.<sup>75</sup>

Based on this version of the facts, allowing the community caretaking exception to extend to the entry into Nemeth's home may have been an inappropriate expansion. Most people would be upset in circumstances such as those related above and would resent any outside interference, particularly by the police. Further, the officers sought no advice from mental health professionals, nor did they have any specialized training or expertise in suicide prevention or intervention. The officers did not contact family members or Wells prior to entering Nemeth's home and did not check Wells's credibility before entering the home. Additionally, Nemeth clearly told officers that she was not a threat to herself or others.<sup>76</sup> Finally, Nemeth did not have any visible injuries and did not appear to be harmed in any way when police came to her home. When the officers arrived, Nemeth was upset but alive and was not brandishing a weapon or threatening her own life in any way. In short, there was little or no indication (other than her upset state) that she intended to harm herself. However, the Court of Appeals did not adequately address the issue of whether the police had an objectively reasonable and good faith belief that Nemeth intended or even threatened suicide.

Moreover, Eagle, one of the officers at the scene, testified that peace officers have three primary duties under the law: (1) to preserve the public peace, (2) to enforce the criminal code, and (3) to serve process.<sup>77</sup> Eagle also testified that counseling and mediating are something officers can do but are not part of an officer's duties. Furthermore, Phelps, the second officer at the scene, testified that she had no training in dealing with potential suicide, and the Aztec Police Department's Standard Operating Procedure did not contain anything specific about potential suicide calls.<sup>78</sup> Therefore, it seems clear that handling potential suicide is not a specific duty of police officers, and the two officers involved in the case were not trained in any way to deal with such a situation.

#### *B. Changes in the Community Caretaking Doctrine as a Result of the Decision by the New Mexico Court of Appeals in Nemeth*

Until this decision, the community caretaking exception in New Mexico was limited to police/citizen vehicle encounters,<sup>79</sup> but the court in *Nemeth* considered the community caretaker doctrine in a different context: the doctrine as it applies to the home.

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75. Docketing Statement at 14-15, *Nemeth* (No. 20637).

76. *Id.* at 15.

77. *Id.* at 3.

78. *Id.*

79. *Nemeth*, 2001-NMCA-029 ¶ 26, \_\_\_ N.M. at \_\_\_, 23 P.3d at 941-42.

The Fourth Amendment and the United States Supreme Court have clearly shown invasion into the home is of grave concern and must be "strictly circumscribed."<sup>80</sup> The Court of Appeals in *Nemeth* referred to the manner in which these types of activities have been articulated, including community caretaker, emergency aid or assistance, and exigent circumstances.<sup>81</sup> The court stated that despite different characterizations, the community caretaker doctrine in some form has taken root in cases involving activities other than automobiles or simple public street encounters.<sup>82</sup>

### 1. Cases Addressing the Community Caretaking Doctrine

The court discussed several cases addressing the community caretaking exception, including *Wood v. Commonwealth*,<sup>83</sup> *People v. Ray*,<sup>84</sup> and *People v. Ohlinger*.<sup>85</sup> In each of these cases, the court expanded the caretaking doctrine to entry into the home and this is a distinct change from previous jurisprudence in which the Supreme Court implied the doctrine was to apply only to automobiles. This was evident from *Cady*,<sup>86</sup> a decision that turned on the distinction between the minimal expectation of privacy in a car and the utmost expectation of privacy in the home. In discussing *Wood*, *Ray*, and *Ohlinger*, the New Mexico Court of Appeals emphasized jurisdictions that have allowed the expansion of the doctrine to the home in certain circumstances, although the cases discussed do not necessarily suggest application of the community caretaking doctrine to the scenario in *Nemeth*.<sup>87</sup>

### 2. Cases Addressing the Emergency Aid/Assistance Exception

The New Mexico Court of Appeals discussed state and federal cases in which the emergency aid or assistance exception has been applied to warrantless entry of the home. The court referred to *United States v. Brown*,<sup>88</sup> *United States v. Moss*,<sup>89</sup> *State*

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80. *Payton v. New York*, 455 U.S. 573, 582 (1980).

81. *Nemeth*, 2001-NMCA-029 ¶ 32, \_\_\_ N.M. at \_\_\_, 23 P.3d at 943.

82. *Id.* ¶ 33, \_\_\_ N.M. at \_\_\_, 23 P.3d at 943.

83. 497 S.E.2d 484, 487 (Va. Ct. App. 1998) (stating the Supreme Court has yet to decide whether a situation might exist that would justify a warrantless intrusion into an individual's home under the community caretaker doctrine, as distinguished from emergency or exigent circumstances. The court in *Wood* held there was no need to decide it here because the officers' intrusion into the room on the second floor of the home was not totally divorced from investigating criminal activity and acquiring evidence and, therefore, could not be considered a caretaking function).

84. 981 P.2d 928, 938 (Cal. 1999) (stating that entry into the home was for the concern of people inside when the door was open and the area was in shambles; thus, these actions invoke community caretaking principles).

85. 475 N.W.2d 54, 56-57 (Mich. 1991) (stating that entry into the home was justified under the community caretaker exception when police shined a light into defendant's bedroom and saw him bleeding and not moving).

86. 413 U.S. 433 (1973).

87. In both *Ray* and *Ohlinger*, the facts involved indicate a stronger basis for believing emergency aid was needed than was suggested in *Nemeth*. In *Nemeth*, the possibility of suicide was involved; while in *Ray* and *Ohlinger*, there were concrete facts, such as an open door showing an area in shambles (*Ray*) and a person bleeding and not moving (*Ohlinger*).

88. 64 F.3d 1083, 1086-87 (7th Cir. 1996) (stating that the police entered the apartment out of concern for safety. The decision to take a brief look inside the apartment was a reasonable one and the agents remained there only long enough to fulfill their purpose).

89. 963 F.2d 673, 678 (4th Cir. 1992) (holding that warrantless entry into the home was only justified if the emergency indicated immediate danger).

*v. Carlson*,<sup>90</sup> *Duquette v. Godbout*,<sup>91</sup> *State v. Fisher*,<sup>92</sup> and *State v. Boggess*.<sup>93</sup> While the exigent circumstances, emergency aid, and community caretaker doctrines are often intertwined,<sup>94</sup> all of these cases involved conduct related not to police duties of crime prevention and investigation, but to their duties to aid and protect citizens. The emergency aid or assistance exception is very similar to the community caretaking doctrine articulated here. To invoke the emergency doctrine, "the person entering a home must have had an objectively reasonable belief that an emergency existed that required immediate entry to render assistance or prevent harm to persons or property within."<sup>95</sup> Application of the emergency doctrine is also subject to another important limitation: Any search following warrantless entry for emergency reasons of the type here described must then be limited by the type of emergency involved. "It cannot be used as the occasion for a general voyage of discovery unrelated to the purpose of the entry."<sup>96</sup>

These cases depict how other jurisdictions, both state and federal, have enlarged an emergency aid/assistance doctrine to include homes, despite the heightened expectation of privacy our society has in residences. Additionally, the test set forth for the emergency aid doctrine is strikingly similar to the test set forth for the community caretaking doctrine, indicating that the two doctrines are not completely different doctrines and, in fact, may not be distinguishable at all.

### 3. Cases Distinguishing the Exigent Circumstances Exception

In *Sheik-Abdi v. McClellan*, the Seventh Circuit stated that exigent circumstances apply only to whether officers had the authority to enter the premises for the purpose

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90. 548 N.W.2d 138, 141 (Iowa 1996) (reiterating that a search is invalid unless the searching officer is actually motivated by a perceived need to render aid or assistance. Additionally, even though the requisite motivation is found to exist, until it can be found that a reasonable person under the circumstances would have thought an emergency existed, the search is invalid. The court also rejected a subjective test.).

91. 471 A.2d 1359, 1362-63 (R.I. 1984) (stating that the emergency exception justified entering a home without a warrant to determine whether a minor child was in peril. The court stated the officers had reasonable belief that their assistance was required, there was a legitimate need to search the home to be sure the child was not in danger, the search must be tailored to meet only the perceived need for assistance and cannot be used as pretext to gain entry for some other purpose. Further, the court stated it must also be considered whether the purpose of the search would be frustrated if the officers were required to obtain a warrant.).

92. 686 P.2d 750, 762 (Ariz. 1984) (stating the entry into the apartment was justified by the emergency doctrine because police had credible information that made it reasonable for them to conclude that there may have been victims in the apartment whose lives could be saved).

93. 340 N.W.2d 516, 522 (Wis. 1983) (stating, "our prior cases have upheld a warrantless entry into a home under the emergency rule exception when they involved a set of common circumstances from which we have concluded that a reasonable person could have believed an emergency existed." The court held the warrantless entry into the home was justified under the emergency exception based on an anonymous tip that child abuse may be occurring).

94. For example, the language in *United States v. Moss* appears to put all three doctrines together: The circumstances under which warrantless entries for such purposes [emergencies] can be made are exactly comparable to those which justify warrantless entries under the more commonly encountered "exigencies." Indeed, they are also frequently referred to as "exigent circumstances." This particular exigency is expressed as one of reasonably perceived emergency requiring immediate entry as an incident to the service and protective functions of the police as opposed to, or as a complement to, their law enforcement functions.

963 F.2d 673, 678 (4th Cir. 1992).

95. *Id.*

96. *Id.*

of arrest or seizure.<sup>97</sup> The Court of Appeals in *Nemeth* added that a related line of cases recognized that emergency situations may arise that can justify a warrantless entry of a home for purposes aside from arrest or seizure<sup>98</sup> or the exigent circumstances exception. The *Sheik-Abdi* court states:

Our colleagues on the Fourth Circuit recently explained that the distinction between the aforementioned doctrines appears to be in the perceived function of the responding officer: a warrantless entry is analyzed as an emergency if purportedly made incident to the service and protective functions of the police and as an exigent circumstance if allegedly executed in a law enforcement capacity.<sup>98</sup>

*Sheik-Abdi* showed that these doctrines are often mistaken among one another and emphasized the difference between them. In addition, this case showed that other jurisdictions have recognized this type of exception to the Fourth Amendment warrant requirement for entry into the home when circumstances are such that police are rendering aid and protection. Despite this, *Nemeth* is a case in which the police were acting solely on what Wells told them. They did not know who Wells really was, whether he was reliable,<sup>99</sup> or what type of relationship he had with *Nemeth*. While this information was not known, under the community caretaking doctrine, police officers may provide aid or assistance and do what is necessary to determine if such aid or assistance is needed. This duty may allow police to rely on information such as that presented by Wells in order to protect citizens. This information can and should be used to respond to the concern of the caller, but more facts may be needed in making the assessment of whether to enter a home to determine whether someone needs the assistance of law enforcement.

The Court in *Nemeth* also discussed *People v. Davis*,<sup>100</sup> in which the court clarified the distinction between the emergency exception/community caretaker exception and the exigent circumstances exception. The court stated the test for the emergency exception as, "First, the officer performing the search must actually be motivated by a perceived need to render aid. Second, even if the officer is actually motivated by this perceived need, the circumstances must be such that a reasonable person would think that an emergency existed."<sup>101</sup> As this test is very similar to that for the community caretaking exception, the court consequently agreed that rendering aid to persons in need, even in a private dwelling, is a caretaking function of the police.<sup>102</sup> The court thus concluded that the community caretaking exception/emergency exception is not a subcategory of the exigent circumstances

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97. 37 F.3d 1240, 1243 (7th Cir. 1994).

98. *Id.* at 1244 (citations omitted).

99. There is some indication that Mike Wells had been drinking when he made this call to the police. Brief for Appellant at 2, *State v. Nemeth*, 2001-NMCA-029, \_\_ N.M. \_\_, 23 P.3d 936 (No.20637).

100. 497 N.W.2d 910, 921 (Mich. 1993) (holding that when the police are investigating a situation in which they reasonably believe someone is in need of immediate aid, their actions should be governed by the emergency aid doctrine, regardless of whether these actions can also be classified as community caretaking activities).

101. *Id.* at 917.

102. *Id.* at 920.

exception as was indicated in *Moss*.<sup>103</sup> Rather, the emergency aid/community caretaker exception is a noticeably different doctrine.

The *Davis* court stated that when police are acting under the exigent circumstances exception, they are searching for evidence of perpetrators of crimes and must show, in addition to probable cause, the existence of an emergency leaving no time for a warrant and that the premises to be searched contain such evidence or suspects.<sup>104</sup> In contrast, the community caretaking and emergency aid exceptions are only invoked when the police are not investigating crimes.

The New Mexico Court of Appeals in *Nemeth* furthered this distinction in quoting the language in *People v. Ray*,<sup>105</sup> which states, "the emergency aid doctrine is not a subcategory of the exigent circumstances exception to the warrant requirement. Rather, it is a subcategory of the community caretaking exception, a distinctly different principle of Fourth Amendment jurisprudence."<sup>106</sup> *Ray* showed the manner in which the community caretaker doctrine is viewed as opposed to the exigent circumstances exception and the possibility of expanding a community caretaker doctrine, which the New Mexico Court of Appeals ultimately does.

#### 4. New Test for the Community Caretaking Doctrine

The New Mexico Court of Appeals used decisions from other jurisdictions to determine that the behavior in *Nemeth* fell within a general community caretaker function because the officers entered the home out of concern for a person's safety, not for any investigative purpose. It may be argued, however, that while the officers may have been motivated by their belief that *Nemeth* needed assistance, it is possible a reasonable person would not believe an emergency actually existed. There are a number of reasons why someone may inform another person (such as the police) of an argument,<sup>107</sup> just as there are myriad reasons why a person may be upset when they open the door or when someone forces their way into their home.<sup>108</sup> Despite this, one of the reasons a person may inform the police or be upset when they open the door is the possibility of suicide and, thus, the officers were justified in responding to Wells's call to see if *Nemeth* needed help. The duties under the community caretaking doctrine include the determination of whether a person is in need of aid or assistance, and coming to the home, walking around the property, knocking on the door, and attempting to speak with *Nemeth* were all activities necessary to the determination. The behavior of *Nemeth*, including her emotional demeanor, were additional facts the police could take into consideration in determining whether she needed their assistance. Based on all of the facts, the police officers' activities were a reasonable attempt to make this determination. However,

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103. *Id.* at 920; *United States v. Moss*, 963 F.2d 673, 678 (4th Cir. 1992).

104. *Davis*, 497 N.W.2d at 920.

105. 981 P.2d 928 (Cal. 1999); *Nemeth*, 2001-NMCA-029 ¶ 35, \_\_ N.M. at \_\_, 23 P.3d at 944.

106. *Ray*, 981 P.2d at 933.

107. For example, a person may be angry with another person and want to cause trouble for them. Thus, calling the police may have simply been a way for Wells to retaliate against *Nemeth* for their argument.

108. An obvious reason why *Nemeth* would have answered the door upset is the argument she had previously with Mike Wells. Additionally, her upset state could have been due to an outside event, such as a family tragedy, that could have occurred before the police arrived. Further, many people would be upset if strangers (police officers or otherwise) forced their way into their homes.



the facts may not justify the officers' entry into her home because all they had was a report and the observation that she was upset. *Nemeth* was not in possession of a weapon or threatening to harm herself when the police arrived and, thus, while police response was justified, the entry into her home may not have been.

Based on the *Nemeth* court's decision that the police conduct in this case fell within general community caretaking functions, the court established the test for the community caretaker exception. The test was articulated as, "whether the officers' actions were objectively reasonable and in good faith. More particularly, the officer must have a reasonable and articulable belief, tested objectively, that a person is in need of immediate aid or assistance or protection from serious harm."<sup>109</sup> The standard articulated in the community caretaker test is akin to the standard of reasonable suspicion stated in *United States v. Arvizu*.<sup>110</sup> This standard is substantially less than probable cause; thus, officers acting under the community caretaking doctrine need not make a "more likely than not" determination that someone is in need of aid or assistance.

The *Nemeth* court took aspects of many state and federal jurisdictions<sup>111</sup> to create the test for the community caretaking doctrine. The test includes a good faith aspect to ensure law enforcement does not use this exception as pretext to enter a home for the purposes of criminal investigation.

The court also implemented into the test the idea that police may enter under this exception only for the limited purpose of determining need of aid and providing what assistance is necessary. However, these safeguards do not require police to turn a blind eye to crime once they have entered, provided they met the test set forth above, and any subsequent arrest is constitutionally lawful and based on probable cause.<sup>112</sup>

While this exception may be a necessary one to deal with potential suicide cases and other similar situations, it may also be true that the doctrine is essentially identical to the emergency aid or assistance exception, which has already been applied to homes.<sup>113</sup> Perhaps the distinction between the community caretaking doctrine and the emergency aid exception is meaningless and, as some cases have suggested, should be distinguished from exigent circumstances but should not be distinguished between one another.<sup>114</sup> Regardless of whether the doctrine is referred to as an emergency aid or community caretaking doctrine, the court in *Nemeth*

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109. *Nemeth*, 2001-NMCA-029 ¶ 37, \_\_\_ N.M. at \_\_\_, 23 P.3d at 944.

110. \_\_\_ U.S. \_\_\_, \_\_\_, 122 S.Ct. 745, 750 (2002). This case stated:

When discussing how reviewing courts should make reasonable-suspicion determinations, we have said repeatedly that they must look at the "totality of the circumstances" of each case to see whether the detaining officer has a "particularized and objective basis" for suspecting legal wrongdoing. This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person.

*Id.* (citations omitted). The reasonable suspicion standard was originally set forth in *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968).

111. *Sheik-Abdi v. McClellan*, 37 F.3d 1240 (7th Cir. 1994); *People v. Ray*, 981 P.2d 928 (Cal. 1999); *Commonwealth v. Waters*, 456 S.E.2d 527 (Va. Ct. App. 1995); *People v. Davis*, 497 N.W.2d 910 (Mich. 1993).

112. *Nemeth*, 2001-NMCA-029 ¶ 38, \_\_\_ N.M. at \_\_\_, 23 P.3d at 944.

113. See *infra* section V.B.2.

114. *Davis*, 497 N.W.2d at 920.

articulated the officers' conduct as community caretaking and determined that the conduct in *Nemeth* satisfied the test set forth. The police officers responded to the call from Wells informing them of possible suicide and were reasonable in doing so. The officers knocked and entered the home to check on the occupant, whom they reasonably believed to be in need of immediate assistance based on Wells's report and Nemeth's behavior when police arrived. Further, the officers entered solely for the limited purpose of determining whether assistance was needed and providing such aid if necessary. This behavior fell exactly within the community caretaker function and accordingly, since the warrantless entry passed the test set forth here, it fell within this exception to the Fourth Amendment and no warrant or probable cause was required. As suggested above, however, the police officers were justified in coming to Nemeth's home but may have required more information that Nemeth needed or may have needed their aid or protection before actually entering her home. Her behavior could reasonably have been due to several causes, not just potential suicide. However, the officers could not be sure and may have been erring on the side of caution by entering Nemeth's home to see if she needed their assistance or protection. Law enforcement officers do not want to stand by idly as someone commits suicide when they may have been able to do something to prevent it.

#### 5. Did the Officers' Conduct Actually Meet the Test?

The community caretaking doctrine has required that police actions meet the test of whether the officer has a good faith belief, tested objectively, that a person is in or may be in need of immediate aid or assistance or protection from serious harm.<sup>115</sup> On the facts in *Nemeth*, the police officers were likely acting in good faith. They were not entering Nemeth's home for any investigatory purpose and did want to help her if needed. However, the officers must also have had an objective, reasonable, and articulable belief that Nemeth was or may have been in need of immediate aid, assistance, or protection from serious harm. In this case, officers may not have had a reasonable belief that met this test. Nemeth did not show any wounds, bleeding, or any other sort of harm. She was merely upset and did not want officers in her home. Despite this, a reasonable police officer may have believed Nemeth could have required their assistance and, thus, the New Mexico Court of Appeals applied the community caretaker doctrine to this situation. While the protective policy behind this decision is commendable, it is a bit troubling that in future similar cases, anyone may call the police and say a person is threatening suicide and this will allow police to enter the home without any further justification.

#### 6. Search and Seizure Provisions Under the United States Constitution and New Mexico State Constitution

In addition, the Court of Appeals failed to adequately address the question of whether the entry into Nemeth's home was permissible under the New Mexico Constitution search and seizure provision, which provides greater protection than

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115. *Nemeth*, 2001-NMCA-029 ¶ 37, \_\_\_ N.M. at \_\_\_, 23 P.3d at 944.

the United States constitutional provision.<sup>116</sup> The greater protection of the New Mexico Constitution was recently addressed in *In re Shon Daniel K.*<sup>117</sup> The court stated, "The protections accorded under Article II, Section 10 of the New Mexico Constitution against unreasonable searches and seizures are more extensive than those provided under the Fourth Amendment to the United States Constitution."<sup>118</sup> The court in *In re Shon Daniel K.* supported this statement with reference to several additional cases. These cases included *Campos v. State*,<sup>119</sup> *State v. Attaway*,<sup>120</sup> *State v. Gutierrez*,<sup>121</sup> and *State v. Cordova*.<sup>122</sup>

In *Campos*, the court concluded that the New Mexico Constitution imposed a greater probable cause requirement, stating,

Our constitution and case law lead us to hold that for a warrantless arrest to be reasonable the arresting officer must show that the officer had probable cause to believe that the person arrested had committed or was about to commit a felony and some exigency existed that precluded the officer from securing a warrant. If an officer observes the person arrested committing a felony, exigency will be presumed.<sup>123</sup>

*Attaway* also displayed the additional protections afforded under the New Mexico search and seizure provision. The court stated that Article II, Section 10 incorporated a "knock and announce" requirement as part of the reasonableness inquiry.<sup>124</sup> The court further stated, "The requirement that officers executing a search warrant announce their identity and purpose and be denied admission is a critical component of a reasonable search under Article II, Section 10,"<sup>125</sup> thus indicating the greater protections under the New Mexico Constitution.

A similar conclusion regarding the additional state constitutional safeguards was reached in *Gutierrez* when the court held that the federal good-faith exception to the exclusionary rule violated the New Mexico Constitution.<sup>126</sup> The result, that the New Mexico constitutional search and seizure provision includes more protections than the United States constitutional provision, was more thoroughly discussed in *Cordova* when the court rejected the "totality of the circumstances" approach in determining probable cause as inconsistent with the New Mexico constitutional safeguards.<sup>127</sup>

The *Nemeth* Court failed to address the New Mexico Constitution in this case and did not effectively address the differences in the requirements under the United States Fourth Amendment provision and that of the New Mexico Constitution. Furthermore, under *Cordova*, the protections of the search and seizure provision of

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116. N.M. CONST. art. II, § 10; see also *In re Shon Daniel K.*, 125 N.M. 219, 959 P.2d 553 (Ct. App. 1998).

117. 125 N.M. 219, 959 P.2d 553 (Ct App. 1998).

118. *Id.* at 222, 959 P.2d at 556.

119. 117 N.M. 155, 870 P.2d 117 (1994).

120. 117 N.M. 141, 870 P.2d 103 (1994).

121. 116 N.M. 431, 863 P.2d 1052 (1993).

122. 109 N.M. 211, 784 P.2d 39 (1989).

123. 117 N.M. at 159, 870 P.2d at 121.

124. *Id.* at 149, 870 P.2d at 111.

125. *Id.* at 150, 870 P.2d at 112.

126. 116 N.M. at 446-47, 863 P.2d at 1067-68.

127. 109 N.M. at 217, 784 P.2d at 36.

the New Mexico Constitution<sup>128</sup> are best served if an informant's tip complies with the veracity and basis of knowledge requirements of *Aguilar* and *Spinelli*.<sup>129</sup> While the *Aguilar-Spinelli* test is applied when police officers are involved in law enforcement functions, it seems that a similar principle may be informative in situations in which officers are performing their community caretaker functions as well. The *Nemeth* court does not discuss whether Wells's call would satisfy the *Aguilar-Spinelli* test or a similar inquiry, although it seems obvious it will not since none of the officers verified Wells's identity, his veracity, reliability, or basis of knowledge for knowing that Nemeth threatened suicide. This appears to be an oversight of the Court of Appeals because they simply apply their United States Constitution Fourth Amendment analysis to the New Mexico provision even though the inquiries under each are significantly different. However, an *Aguilar-Spinelli* inquiry takes time on the part of an officer, and this may not be advisable when a potential suicide is at issue. Further, New Mexico cases have not indicated that scenarios like the one presented in *Nemeth* should be analyzed separately under each constitution or that an inquiry like the *Aguilar-Spinelli* test should apply. Despite this, it seems some such inquiry would aid in the protection of citizens' constitutional rights.

### C. Future Application of the Community Caretaking Doctrine in New Mexico

Because the court in *Nemeth* determined that this situation does fit within the community caretaking exception, cases in the future with similar facts will also come within it, even if there is not reasonable support to show that a person is suicidal.

The purpose of the community caretaking exception is to allow police to determine whether assistance is necessary, to administer aid if it is, and to allow police to enter a home on a limited inquiry. The reasonableness of response and entry under this doctrine is by nature fact specific and, in many cases, additional facts may be necessary before police entry can fall under the exception. Otherwise, police may enter a home anytime anyone calls the police and says someone has threatened to harm himself or herself. No other exception allows such an entry on so little.<sup>130</sup> The community caretaking exception may apply to the entry into homes

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128. N.M. CONST. art. II, § 10.

129. The United States Fourth Amendment provision requires a totality of the circumstances inquiry. *Illinois v. Gates*, 462 U.S. 213, 230 (1983). The New Mexico provision requires satisfaction of the two-pronged test set forth in *Aguilar v. Texas*, 378 U.S. 108 (1964), and *Spinelli v. United States*, 393 U.S. 410 (1969). *Cordova*, 109 N.M. at 217, 784 P.2d at 36. The so-called *Aguilar-Spinelli* test encompasses two prongs:

1) "credibility prong" which assesses the credibility/reliability of an informant. This may be determined based upon the informant's prior track record of credibility or by corroboration by police of the details given in the informant's tip.

2) "basis of knowledge prong" which assesses how the informant knows the information he/she is passing along to the police. This may be determined by asking the informant how they know this information or by the type of details contained in the tip. The more intimate and predictive of future behavior the details are, the more likely the informant has a good basis of knowledge.

*Cordova*, 109 N.M. at 217, 784 P.2d at 36.

130. For example, the exigent circumstances exception requires the existence of an emergency situation that demands urgent police action and can only justify a warrantless entry into a residence where there is also probable cause to enter. *United States v. Johnson*, 9 F.3d 506, 509 (6th Cir. 1993). The emergency doctrine

when suicidal situations arise, but only on a good faith and objective belief that suicide may occur. This is a difficult determination but at the very least, in *Nemeth*, police should have verified Wells's relationship with Nemeth and perhaps his veracity and reliability, particularly because the New Mexico Constitution search and seizure provision requires this, at least for law enforcement searches and entries.<sup>131</sup>

## VII. CONCLUSION

The community caretaking exception to the Fourth Amendment warrant requirement has grown significantly from its roots in *Cady v. Dombrowski*.<sup>132</sup> What began as an exception that applied to police-citizen encounters involving automobiles has now expanded to reach into the private sanctuary of the home. While an officer's duty to aid and assist a citizen in need is an important function that benefits society, any exception to the Fourth Amendment must not trample the constitutional rights of any citizen. The community caretaking exception is a fair and useful exception but must be applied to situations in which there is an objective, good-faith belief that someone is or may be in need of assistance from the police. Anything less is to expand the exception too far into guaranteed constitutional rights.

The decision by the New Mexico Court of Appeals in *Nemeth* brings the community caretaking exception to the Fourth Amendment to a new level. The decision implies that police need little belief and corroboration that someone is in need of assistance before entering a home to render aid that may be unnecessary. The Court of Appeals recognized that police must be able to make a determination whether assistance is needed and, in doing so, may need to respond and enter a person's home. The entry in *Nemeth* may have been unjustified, however, as police may have been able to assess her need without entry. Police observed and spoke with Nemeth and she repeatedly said she was fine and just angry. Nothing Nemeth said or did indicated that she was going to attempt suicide. While any judgment in this type of situation is difficult, the test established by this very court requires that the officer must have a good faith belief, tested objectively, that a person is, or may be, in need of immediate aid, assistance, or protection from harm.<sup>133</sup> In this case, the only facts from which to infer any belief was a call from an unverified source and an upset woman who didn't want police in her home and, consequently, acted irrationally at times during the incident. For the community caretaking exception to be on the same level as other exceptions to the Fourth Amendment,<sup>134</sup> more facts in this type of situation must be present in order to reach the level of a good-faith and

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requires that the police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property. (2) The search must not be primarily motivated by intent to arrest and seize evidence. (3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched.

*People v. Mitchell*, 347 N.E.2d 607, 609 (N.Y. 1976).

131. See *Cordova*, 109 N.M. at 217, 784 P.2d at 36.

132. 413 U.S. 433 (1973).

133. *Nemeth*, 2001-NMCA-029 ¶ 37, \_\_\_ N.M. at \_\_\_, 23 P.3d at 944.

134. See *supra* note 130.

objective belief that someone in the home was or may have been in need of immediate aid or assistance.

Despite the potential problems with expanding the exception to the factual situation presented in *Nemeth*, the community caretaking exception, including the formulation of the test, seems to be a just and helpful exception to the Fourth Amendment, even though it closely parallels the established emergency aid exception. Police officers frequently encounter situations in which a person inside a private residence is or may be in need of immediate aid or assistance from police. To bar police from entering the home in such situations would not only make a police officer's job more difficult than it already is but would also needlessly endanger citizens' lives. Thus, such an exception should apply to the entry of homes if the facts satisfy the test set forth by the court in *Nemeth* and create a good faith belief, tested objectively, that a person inside that home is or may be in need of assistance from the police.

While the application of the community caretaking doctrine in *Nemeth* may be problematic, the decision is an important one because it recognizes that the exception does allow entry into a private home under appropriate conditions and sets forth a test to guide officers in functioning as a community caretaker. This decision also provides a guide for other jurisdictions, lawyers, and judges to follow in the future.