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Policing the Fourth Amendment: The Problematic Effects of Expanding the Community Caretaking Doctrine in *United States v. Treisman*[*]

In United States v. Treisman*, the Fourth Circuit upheld the warrantless search of a vehicle by relying on the community caretaking doctrine ("CCD"). The court's decision dangerously broadens the CCD, allowing for potential abuse of citizens' Fourth Amendment rights. By exploring the facts of the case, the history and application of the Fourth Amendment, and the nuances of the CCD, this Recent Development argues that the Fourth Circuit's ruling undermines privacy protections and sets a precedent for increased police discretion in warrantless searches. This expansion not only threatens citizens' privacy rights but also further complicates the dual role of police officers as both protectors of the community and enforcers of the law. This Recent Development concludes with a call for stricter standards and clearer guidelines to prevent the erosion of Fourth Amendment protections under the guise of community caretaking.*

INTRODUCTION

Supreme Court Justice Louis Brandeis cautioned long ago that "[e]xperience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. . . . The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."[1] *United States v. Treisman*[2] epitomizes this warning.

In *Treisman*, the Fourth Circuit validated the Kannapolis Police Department's ("KPD's") decision to enter and search an unattended vehicle, holding that their actions were allowed under the community caretaking doctrine ("CCD").[3] While the court may have had the benevolent intentions of affirming what the police officers claim was an attempt to protect their community, this case opens the door for abuse of individuals' Fourth Amendment right to privacy. The officers justified their entrance and subsequent search by arguing that someone within the vehicle could have needed medical help because it was hot outside, there was a suitcase in the front seat, and the vehicle had an out-of-state license plate.[4] But the court failed to enumerate exactly how far this result can extend: Can officers now enter and search any vehicle on a hot day for fear that someone may need assistance?

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1. Olmstead v. United States, 277 U.S. 438, 479 (1928) (Brandeis, J., dissenting).
2. 71 F.4th 225 (4th Cir. 2023).
3. *Id.* at 236.
4. *Id.* at 230.

This Recent Development argues that the Fourth Circuit wrongfully stretched the CCD in order to validate the police officers' actions in Treisman's case. As a result, it is now easier for officers to violate citizens' Fourth Amendment rights via unreasonable searches under the shield of the newly extended CCD. Moreover, this case underscores the duality inherent in the roles of police officers, who serve as both protectors of the community and enforcers of the law. Part I elaborates on the facts of *Treisman*. Part II provides background on the Fourth Amendment and contextualizes some exceptions to the warrant requirement with a specific focus on the CCD. Part III explains the Fourth Circuit's CCD analysis in the case and exhibits a step-by-step critique of the Fourth Circuit's CCD application. Finally, Part IV discusses the negative effects that may occur because of the Fourth Circuit's misapplication and overextension of the CCD in *Treisman*.

I. FACTS OF *UNITED STATES V. TREISMAN*

In late May of 2020, Crystal Wright arrived at her workplace, the Fifth Third Bank in Kannapolis, North Carolina, to find a van legally parked in the bank's lot—the same spot it had been the night prior.[5] She called the KPD for assistance, and Officer Nathan Lambert arrived at the scene around 11:00 AM.[6] Officer Lambert could not ascertain the vehicle identification number or determine the owner of the van.[7] However, Officer Lambert was able to identify some of the items inside the van.[8] The front cabin of the van had windows, which made its contents—an assault rifle, a handgun box, an ammunition box, a Tannerite container, a container of pills, and a suitcase—visible from outside the van.[9]

An hour later, Officer Brandon Wagner arrived at the scene.[10] Officers Lambert and Wagner, concerned about the contents of the van, called their supervisor, Sergeant Tim Lafferty.[11] Sergeant Lafferty raised the point that someone inside the van may need assistance,[12] especially because it was a hot

5. *Id.* at 227.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.* at 227–28. Tannerite is a product used for target practice that is comprised of two powders that become explosive when combined. While Tannerite is legal, it can also be combined with other products to create makeshift bombs. Mike M. Ahlers & Rene Marsh, *Exploding Targets: Shooting Aid or a 'Bomb Kit for Dummies?'*, CNN (Sept. 9, 2013, 1:00 PM), https://www.cnn.com/2013/09/06/us/guns-exploding-targets/index.html [https://perma.cc/EZ6Z-FFDA].

10. *Treisman*, 71 F.4th at 228.

11. *Id.*

12. Sergeant Lafferty noted that under North Carolina law, if they reasonably believed someone needed care to save their life or prevent serious bodily harm, the officers were legally allowed to enter the van under the exigency doctrine. *See* N.C. GEN. STAT. § 15A-285 (2023) ("When an officer

day, the air conditioner was not running, the van had California plates, and it contained a suitcase, indicating someone may be living in the vehicle.[13] So, after another thirty minutes, without knocking or declaring their presence,[14] Lambert and Wagner pulled open the back door of the van with their guns drawn.[15]

Upon entering the vehicle, the officers did not see anyone in need of help.[16] However, they did notice more gun cases.[17] Sergeant Lafferty arrived shortly after and decided to look through the van "to see if the others had missed someone in distress."[18] The officers discussed the contents of the van and agreed that it "created public safety concerns" because someone could see the weapons and be tempted to break in, steal them, and use them to harm others.[19] Additionally, the officers wanted to "safekeep the valuable items for the owner of the van."[20]

The bank was unable to tow the van,[21] so Wright asked the officers if they could.[22] Proper KPD procedure for towing a vehicle on private property requires contacting the city zoning administrator ("CZA"); however, the officers decided that because of the weapons within the van, the CZA would probably defer to the police.[23] Proper KPD procedure also required that the car be "abandoned," that the owner be unable to tow the vehicle "without police assistance," and that the property owner sign a tow-request form.[24] The officers believed these three requirements were met and thus planned to tow the vehicle.[25]

Before towing, per KPD policy, the officers conducted an inventory search of the items in the van.[26] While conducting the inventory search, the officers discovered a duffle bag with a pistol, a large amount of cash in sealed bank bags,

reasonably believes that doing so is urgently necessary to save life, prevent serious bodily harm, or avert or control public catastrophe, the officer may take one or more of the following actions: (1) Enter buildings, vehicles, and other premises. (2) Limit or restrict the presence of persons in premises or areas. (3) Exercise control over the property of others.").

13. *Treisman*, 71 F.4th at 228.

14. Treisman argued that the delayed entrance into the van and the choice to not knock or announce themselves are evidence that the police officers were not entering the vehicle as an exercise of their caretaking function, but "as a pretext to conduct an investigatory search." *Id.* at 233.

15. *Id.* at 228–29.

16. *Id.*

17. *Id.* at 229.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.* ("[T]he bank was unable to tow the van because its towing company refused to tow vehicles containing firearms.").

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

and "books about survival, bomb making, improvised weapons and Islam."[27] The officers' superior, Captain Justin Smith, believed that these items were "uncovered evidence of a crime."[28] Because of these suspicious items,[29] the officers decided to stop the inventory search and obtain a search warrant.[30] They towed the car to a KPD storage facility so that they could search the van pursuant to a search warrant.[31] Treisman later returned to retrieve his van from the bank, where he was detained by KPD.[32] About an hour after Treisman's detainment,[33] KPD obtained a search warrant for the van, evidence from which was used a few days later by FBI agents to obtain a federal warrant to search Treisman's phone.[34] The FBI then discovered child pornography on Treisman's various electronic devices.[35] The evidence used against Treisman at his trial was unrelated to the contents of the van that were used to obtain the initial search warrant.[36]

Treisman was arrested for possession of child pornography and for transportation of child pornography.[37] Treisman moved to suppress evidence discovered from the search of his van, arguing that it was obtained in a manner that violated his Fourth Amendment rights. Specifically, he argued

> [(1)] the officers did not have an objectively reasonable belief that an emergency existed that required them to immediately enter the van without a warrant to see if anyone was in medical distress inside[, (2)] the officers did not have legal authority to tow the van[, and (3)] the inventory search was a pretext for a warrantless criminal investigation.[38]

The District Court for the Middle District of North Carolina denied Treisman's motion to suppress, finding that the officers acted reasonably when entering the van under either the codified emergency aid prong of the exigency doctrine[39] or the CCD.[40] Further, the district court held that the officers reasonably towed the vehicle in compliance with KPD policies and that the

27. *Id.* Notably, the FBI later returned the money to Treisman when they discovered that this was legally Treisman's money, which he inherited upon the death of his father. *Id.* at 229 n.3.

28. Brief of Appellant at 12, *Treisman*, 71 F.4th 225 (No. 21-4687), 2022 WL 2967038, at *12.

29. The Fourth Circuit noted that the officers' suspicions of criminal activity were furthered as they found "books about survival, bombmaking, improvised weapons[,] Islam, . . . several electronic devices[, and] a drone." *Treisman*, 71 F.4th at 229.

30. *Id.*

31. *Id.*

32. *Id.*

33. Brief of Appellant, *supra* note 28, at 13.

34. *Treisman*, 71 F.4th at 229.

35. *Id.*

36. *See id.*

37. *Id.*

38. *Id.* at 230.

39. N.C. GEN. STAT. § 15A-285 (2023).

40. *Treisman*, 71 F.4th at 230.

inventory search was not pretextual for a criminal investigation.[41] Following the denial of his motion, Treisman pled guilty to possession of child pornography, but he retained the right to appeal the denial of his motion to suppress.[42]

II. OVERVIEW OF THE LEGAL LANDSCAPE OF THE FOURTH AMENDMENT, SPECIFICALLY INVESTIGATING THE HISTORY AND CONTEMPORARY UNDERSTANDING OF THE COMMUNITY CARETAKING DOCTRINE

The district court found that the warrantless inventory search of Treisman's vehicle was appropriate under either the emergency aid doctrine or the CCD.[43] In order to contextualize the court's decision—and highlight its implications—this part provides an overview of the essential elements of the Fourth Amendment and describes the relevant exceptions to the warrant requirement.

A. *Overview of the Fourth Amendment's Reasonableness Standard and Application*

The Fourth Amendment guarantees protection against unreasonable searches and seizures.[44] When analyzing whether a search violates the Fourth Amendment, courts must balance two oft-competing interests to determine whether the intrusion was reasonable—privacy concerns and law enforcement interests.[45] So, while people have "a constitutionally protected reasonable expectation of privacy,"[46] the level of privacy warranted fluctuates because some spaces are held to be more private than others. It follows that automobiles are afforded a "lesser degree of protection" under the Fourth Amendment than, for example, a person or their house.[47] Because there is a lower expectation of privacy, the rigor of the warrant requirement is lower.[48]

Over the years, courts have recognized various exceptions to the warrant requirement, including those specific to the search of vehicles.[49] For example, a warrantless search of an automobile may be made if the search is "incident to a valid arrest" or if there is "probable cause to believe the vehicle is carrying

41. *Id.*
42. *Id.*
43. *Id.*
44. U.S. CONST. amend. IV.
45. *See* Maryland v. King, 569 U.S. 435, 448 (2013).
46. Katz v. United States, 389 U.S. 347, 360 (1967) (Harlan, J., concurring).
47. California v. Carney, 471 U.S. 386, 390 (1985). Cars are afforded less protection than other belongings because they are mobile, which creates circumstances of exigency, and there is generally a lesser expectation of privacy when one is in their car than there is in one's home. *Id.* at 391.
48. South Dakota v. Opperman, 428 U.S. 364, 367 (1976).
49. Emile F. Short, Annotation, *Lawfulness of "Inventory Search" of Motor Vehicle Impounded by Police*, 48 A.L.R.3d 537 § 2(a) (1973).

contraband or illegal merchandise."[50] Looking specifically at the requirements of a valid automobile *inventory* search, police must act in good faith and must not use the inventory procedure as "a subterfuge for a warrantless search."[51] Further, the automobile must be lawfully in the police officer's custody.[52] Thus, if the police officers' purpose is investigatory, as opposed to administrative, and when the automobile is not lawfully in police custody, courts have held that the inventory searches were violative of the Fourth Amendment.[53]

B. *The Community Caretaking Doctrine and Its Application*

The responsibilities of police officers have grown in accordance with the expansion of police forces in the past few decades.[54] Police officers' job descriptions extend far beyond enforcing the law: officers are increasingly expected to address larger societal issues, such as "treating overdoses[,] de-escalating behavioral health crises[,] addressing homelessness and responding to disciplinary concerns in school," among other responsibilities.[55] To perform these caretaking functions, police officers occasionally need to enter cars, homes, or other places without a warrant.

Historically, courts justified these intrusions as lawful under the exigent circumstances doctrine.[56] However, this rationale was so overused that it became a "bloated abstraction" that allowed courts to improperly "resort to meaningless catchall exceptions."[57] While some courts continue to use exigent circumstances as an umbrella term,[58] others have argued the excessive reliance on this doctrine led to a few necessary developments in the law: courts (1)

50. *Id.*

51. *Id.* In *Whren v. United States*, 517 U.S. 806 (1996), the Supreme Court found that "[s]ubjective intentions [of individual officers] play no role in ordinary, probable-cause Fourth Amendment analysis" with respect to traffic stops. *Id.* at 813. If courts find this holding to extend beyond traffic stops, then it would be a difficult standard for defendants to meet.

52. Short, *supra* note 49, § 2(a).

53. *Id.*

54. BETSY PEARL, BEYOND POLICING: INVESTING IN OFFICES OF NEIGHBORHOOD SAFETY, CTR. FOR AM. PROGRESS 1 (2020), https://www.americanprogress.org/wp-content/uploads/sites/2/2020/12/ONSblueprint-121620.pdf [https://perma.cc/MMK7-JQCP] ("[T]he number of police officers nationwide has grown by 36 percent in two decades—from less than 700,000 officers in 1990 to more than 950,000 in 2012.").

55. *Id.*

56. Off. of the Alameda Cnty. Dist. Att'y, *Community Caretaking Searches and the Restructuring of "Exigent Circumstances,"* POINT VIEW, Summer 2004, at 1–2 [hereinafter Alameda Cnty., *Community Caretaking Searches*], https://le.alcoda.org/publications/point_of_view/files/community.pdf [https://perma.cc/L8RJ-HLLQ].

57. *Id.* at 2.

58. United States v. Cooks, 920 F.3d 735, 741–42 (11th Cir. 2019) ("The exigency umbrella 'encompasses several common situations where resort to a magistrate for a search warrant is not feasible or advisable, including: danger of flight or escape, loss or destruction of evidence, risk of harm to the public or the police, mobility of a vehicle, and hot pursuit.'" (quoting United States v. Holloway, 290 F.3d 1331, 1334 (11th Cir. 2002))).

recognized the CCD as a new exception to the warrant requirement and (2) refined their understanding of the emergency aid doctrine to be a specific category within the larger exigent circumstances exception to the warrant requirement, rather than conflating the two terms and using them interchangeably.[59]

In response to these new developments in the law, the Supreme Court of the United States first recognized the CCD in *Cady v. Dombrowski*.[60] In *Cady*, the Supreme Court noted that local police officers have increased interactions with the public that do not pertain to criminal violations, specifically because local law enforcement has increased contact with vehicles for reasons related to the operation of vehicles themselves, such as if a car is broken down on the side of the highway and the driver needs assistance.[61] These police-civilian interactions, dubbed "community caretaking functions," are defined as those that are "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute."[62] The Supreme Court held that searches undertaken to perform these functions do not require a warrant, and are subject only to the "general standard of 'unreasonableness' as a guide in determining whether searches and seizures meet the standard of [the Fourth] Amendment."[63]

So, to differentiate the recently developed doctrines, one must look to the relevant standards. When defined specifically—rather than used in a generic sense—the doctrines have different prerequisites. The exigency doctrine requires a reasonable belief that the officers must enter warrantless for a time-sensitive reason;[64] the emergency aid doctrine—a specific exception under the exigent circumstances umbrella—requires a reasonable belief of imminent threat to life or property;[65] and the CCD requires a balancing of privacy and law enforcement interests, ultimately measured by the yardstick of reasonableness.[66]

For example, imagine your extremely punctual grandmother does not show up for your lunch plans. After a few unanswered calls, you may be so concerned that you call 911 and ask the police to go to her home and check to

59. Alameda Cnty., *Community Caretaking Searches*, *supra* note 56, at 2.

60. 413 U.S. 433, 441 (1973).

61. *Id.*

62. *Id.*

63. *Id.* at 448.

64. Caniglia v. Strom, 593 U.S. 194, 204–05 (2021) (Kavanaugh, J., concurring) ("[T]he exigent circumstances doctrine allows officers to enter a home without a warrant in certain situations, including: to fight a fire and investigate its cause; to prevent the imminent destruction of evidence; to engage in hot pursuit of a fleeing felon or prevent a suspect's escape; to address a threat to the safety of law enforcement officers or the general public; to render emergency assistance to an injured occupant; or to protect an occupant who is threatened with serious injury.").

65. Alameda Cnty., *Community Caretaking Searches*, *supra* note 56, at 2.

66. *Id.*

see if everything seems alright. When the police officers arrive at your grandmother's home, they are acting as caretakers, *not* as agents of law enforcement. If the officers arrive at your grandmother's home and see her lying on the ground and yelling for help, then they would likely be able to enter her home under the emergency aid prong of the exigent circumstances doctrine—this situation is time-sensitive *and* there is an imminent threat to life. An entrance in this situation would additionally be statutorily authorized in North Carolina, which allows an officer to enter buildings if the officer "reasonably believes that doing so is urgently necessary to save life, prevent serious bodily harm, or avert or control public catastrophe."[67]

However, if the officers do not reasonably believe that their entrance is urgently necessary to save your grandmother's life, then their entrance would not be justified under this law or the emergency aid prong of the exigency doctrine. Does this mean the police officers cannot check on your grandmother if they do not see her struggling through the window? Luckily for Grandma, even if there is no reasonable belief of emergency, police may be allowed to enter to perform a welfare check under the CCD.[68] The police would first need to determine if entrance is reasonable by weighing your grandmother's right to privacy against your and your family's well-founded concern for her well-being. The CCD has come to act as "a catchall for the wide range of responsibilities that police officers must discharge aside from their criminal, enforcement activities,"[69] especially for those situations where there is no apparent emergency or other exigent circumstance rationalizing their actions.[70]

While the Supreme Court has affirmed the existence of the CCD, outside of the "vague command of reasonableness," it has provided very little doctrinal guidance on how exactly the CCD should be applied.[71] The only other Supreme Court mention of the CCD with respect to warrantless searches of vehicles is in *South Dakota v. Opperman*.[72] In *Opperman*, the Vermillion Police Department towed and performed an inventory search of Opperman's car and discovered

67. N.C. GEN. STAT. § 15A-285 (2023).

68. Andrea L. Steffan, Note, *Law Enforcement Welfare Checks and the Community Caretaking Exception to the Fourth Amendment Warrant Requirement*, 53 LOY. L.A. L. REV. 1071, 1072 (2020) ("The exception to the Fourth Amendment warrant requirement many local governments and police departments rely on to allow police to perform welfare checks is called the community caretaking exception.").

69. *Id.* at 1072–73.

70. Megan Pauline Marinos, Comment, *Breaking and Entering or Community Caretaking? A Solution to the Overbroad Expansion of the Inventory Search*, 22 GEO. MASON U. C.R.L.J. 249, 251 (2012).

71. Michael R. Dimino, Sr., *Police Paternalism: Community Caretaking, Assistance Searches, and Fourth Amendment Reasonableness*, 66 WASH. & LEE L. REV. 1485, 1490 (2009).

72. 428 U.S. 364, 368 (1976). While there are no other Supreme Court CCD mentions with respect to cars, notably, the Supreme Court recently declined to extend the CCD to apply to homes. Caniglia v. Strom, 693 U.S. 194, 202–04 (2021) (Kavanaugh, J., concurring).

marijuana in the unlocked glove compartment.[73] Opperman's car had received multiple parking violations, one of which provided express notice that his car would be towed if he did not remove it from the city's restricted zone.[74] The Supreme Court held that the inventory search of Opperman's car was reasonable under the totality of the circumstances, and thus compatible with the Fourth Amendment.[75] Importantly, the Supreme Court repeatedly emphasized that an essential fact in determining the reasonableness of the search was that Opperman's car was impounded pursuant to "standard police procedures."[76] These Supreme Court decisions, in conjunction with the Fourth Circuit's decision in *United States v. Brown*,[77] influenced the reasoning of the Fourth Circuit's determination of *Treisman*.

III. THE FOURTH CIRCUIT'S COMMUNITY CARETAKING ANALYSIS OF *UNITED STATES V. TREISMAN* AND CRITIQUE

On appeal, Treisman argued that the district court erred in concluding that the officers were reasonably acting under their community caretaking function when they entered his van both times and towed it.[78] However, the Fourth Circuit disagreed. Ultimately, relying on the reasonableness of the officers' actions, the court concluded that the initial warrantless entrances into the van and the subsequent inventory search were all nonviolative of Treisman's Fourth Amendment rights.[79]

A. *The Fourth Circuit's Holding and Analysis with Respect to the Initial Entrance and Search of the Van*

For the initial entrance into the van, the court relied on factual determinations made by the lower court that indicate it was reasonable to believe someone could have been in the back of the van in need of emergency medical assistance.[80] Namely, that there was a suitcase in the van (indicating someone may be living in it), it was a hot day, the air conditioning unit was not running, and there were weapons in plain view.[81] Notably, the Fourth Circuit avoided performing direct statutory interpretation or application of the relevant

73. *Opperman*, 428 U.S. at 366.

74. *Id.* at 365.

75. *Id.* at 376.

76. *Id.* at 376. "On this record we conclude that in following standard police procedures, prevailing throughout the country and approved by the overwhelming majority of courts, the conduct of the police was not 'unreasonable' under the Fourth Amendment." *Id.*

77. 787 F.2d 929, 932 (4th Cir. 1986). *See infra* note 97 and accompanying text.

78. United States v. Treisman, 71 F.4th 225, 231 (4th Cir. 2023).

79. *See id.* at 233.

80. *Id.*

81. *Id.*

North Carolina emergency aid statute,[82] thus primarily hinging its arguments on the CCD with respect to a potential individual in need of medical assistance within the vehicle.[83]

Treisman did not raise a meaningful argument against the district court's alternative conclusion, that the officers were initially allowed to enter the van warrantless under community caretaking functions to "ensure public safety,"[84] and thus foreclosed this avenue of appeal.[85] Despite the fact that it was not raised on appeal, the Fourth Circuit, very briefly, determined entrance was reasonable to protect the *general public* welfare because there were weapons in the van that were visible from the outside.[86]

B. *Critique of the Fourth Circuit's Holding and Analysis with Respect to the Initial Entrance and Search of the Van*

As aforementioned, the Fourth Circuit did not apply the North Carolina emergency aid statute, despite crediting the officers' testimony that they entered the van because they were "concerned someone was in medical distress."[87] The court is unclear as to why it did not engage with the statute—it either found the CCD justification was sufficient alone, or it conflated the emergency aid statute and the CCD. Regardless of intentions, the lack of meaningful engagement with the statute[88] is consistent with the fact that, if interpreted properly, the statute would not justify entrance under these facts. It is hard to believe that the initial entrance was "urgently necessary to save life, prevent serious bodily harm, or avert or control public catastrophe."[89] The officers never heard any noises from inside the van, never called out to see if anyone needed assistance, and waited an hour and a half to enter.[90] Further, Sergeant Lafferty's entrance was *after* the others had already entered, performed a brief search of the vehicle, observed no further evidence of someone in need of medical distress, and exited the vehicle.[91]

It is doubtful that a reasonable officer would believe it was urgently necessary to save a life—and authorize both Officers Lambert and Wagner's entrance along with Sergeant Lafferty's subsequent entrance—after the large amount of time that had passed and the attendant circumstances. Exclusively

82. N.C. GEN. STAT. § 15A-285 (2023).

83. *Treisman*, 71 F.4th at 233 ("[W]e affirm the district court's decision that entering the rear of the van was a reasonable exercise of the officers' community caretaking functions.").

84. *Id.*

85. *Id.*

86. *Id.* at 233–34.

87. *Id.*

88. N.C. GEN. STAT. § 15A-285 (2023).

89. *Id.*

90. Brief of Appellant, *supra* 28, at 8–9.

91. *Id.* at 9–10.

relying on the CCD, and ignoring the statute and exigent circumstances doctrine,[92] is especially concerning because the court acknowledged later in the opinion that "see[ing] if someone needed assistance" was "the primary reason they [initially] entered the . . . van."[93] This falls squarely within the bounds of both of those doctrines, yet neither was discussed.

The Fourth Circuit's alternative conclusion still relied on the CCD but used it in a slightly different way. Rather than the police officers caring for a potential individual in the back of the van, the court held that the officers could reasonably have entered the van to "ensure public safety."[94] The court shifted who the officers were protecting in that moment—from a person potentially having an urgent medical emergency to the public. While this switch in who the officers were caring for under the CCD may seem unimportant, it is essential to the critique of the Fourth Circuit's analysis because they failed to address a change in their reasonableness analysis. To clarify, an individual's privacy concern is lesser than their interest in living—most people would reasonably say the governmental interest in protecting its citizens' lives wins over an individual's freedom from intrusion in an urgent medical situation. However, the governmental interest in protecting the public from weapons within a closed vehicle does not clearly outweigh an individual's freedom from governmental intrusion in the same way. Yet the Fourth Circuit haphazardly listed the CCD with respect to Treisman and the CCD with respect to the public as alternate conclusions. Thus, they ignored the nuanced reasonableness analysis required to justify the officers' entrances, which depends on *who* is being cared for by the officers.

C. *The Fourth Circuit's Holding and Analysis with Respect to the Decision To Tow and Perform an Inventory Search*

Treisman then argued that the district court erred in holding that the warrantless towing and inventory search of his van was reasonable under the CCD.[95] To evaluate whether the inventory search was constitutional, the Fourth Circuit needed to evaluate whether the car was rightfully in the possession of the officers.[96] Accordingly, the Fourth Circuit analyzed the situation under the relevant test from *United States v. Brown*, which held police officers may inventory a vehicle without a warrant if: (1) the vehicle is in the lawful custody of the police; (2) the inventory search is routine and conducted

92. The Fourth Circuit only mentions the exigent circumstances doctrine in a footnote, mentioning that these facts may implicate the doctrine in some situations, but because that issue is not raised here, they do not discuss it. *See Treisman*, 71 F.4th at 233 n.6.

93. *Id.* at 233.

94. *Id.*

95. *Id.* at 234.

96. *Id.* (citing United States v. Brown, 787 F.2d 929 (4th Cir. 1986)).

pursuant to standard police procedures; and (3) the search aims to secure the car or its contents and not to gather incriminating evidence against the owner.[97]

To satisfy the first prong of *Brown*, the Fourth Circuit reiterated that the officers were acting reasonably to protect the *public* by deciding to impound the vehicle because of its potentially dangerous contents.[98] Additionally, the Fourth Circuit said it was reasonable to tow the van because the van contained valuables that "needed to be safeguarded."[99] Regarding the second prong, the Fourth Circuit held that while the officers did not strictly comply with KPD procedures, ultimately their noncompliance was considered reasonable under the unique circumstances posed in the situation.[100]

Finally, the Fourth Circuit affirmed the district court's conclusion that the search was not pretextual, and thus satisfied the third prong of *Brown*. The court concluded that "the failure of the officers to itemize [the guns and cash] did not outweigh the other evidence that the search was conducted to secure and protect the valuable and potentially dangerous items in the van and not to obtain evidence of criminal activity."[101] The Fourth Circuit ultimately held that KPD policies justified the officers' decision to cease the inventory search upon finding enough evidence to support a suspicion of criminal activity.[102]

D. *Critique of the Fourth Circuit's Holding and Analysis with Respect to the Decision To Tow and Perform an Inventory Search*

The court began its analysis of the constitutionality of the inventory search by evaluating KPD's possession of Treisman's van, holding that it was reasonable in the name of protecting the public under the CCD. While it is clear how visible weapons in an unaccompanied vehicle may be unsettling, authorizing entrance into a parked vehicle—that is not causing a nuisance—less clearly supports the police taking custody of the vehicle. Often when an automobile is towed under the CCD to protect the public, it is because the van is blocking a road or potentially causing danger on the side of a highway.[103] However, here, Treisman's van was in a parking lot and not causing a nuisance to the public.[104] Further, the court's reliance on protecting the valuables within the car is also concerning—that someone has valuables in their car (some of which are hidden from plain view) should not authorize the police to *take custody*

97. *Brown*, 787 F.2d at 932 (4th Cir. 1986).
98. *Treisman*, 71 F.4th at 234.
99. *Id.*
100. *Id.* at 236.
101. *Id.*
102. *Id.*
103. *See* Short, *supra* note 49, § 6(b).
104. *See Treisman*, 71 F.4th at 227.

of their vehicle. While the court's reasoning may sound *prima facie* reasonable, the arguments break down upon closer inspection.

Next, the court found that the second prong of *Brown* was satisfied, indicating it believed that the proper KPD procedures were followed. Despite this holding, the evidence indicates that almost every single relevant KPD procedure was violated. KPD procedure requires that when a party tows a vehicle on private property, they must go through the CZA.[105] This did not occur here, as the officers believed that the CZA would defer to the police, even though the police never contacted the CZA to check this assumption.[106] Additionally, the CZA must provide seven days' notice to tow an abandoned vehicle; however, the police were not required to provide *any* notice here.[107]

Moreover, another KPD policy required that the private property owner be unable to tow the vehicle. The Fourth Circuit considered that requirement to be met because the tow company the bank typically relied on had a policy to not tow vehicles with weapons in them.[108] However, there is no evidence that the bank contacted their on-call towing company that day, nor is there evidence that they called any of the other ten local towing companies.[109] While it is true that officers are not required to elect the least intrusive method to protect the public,[110] the officers violated almost every standard procedure and ultimately shortchanged Treisman's privacy because the search was allegedly reasonable under the circumstances.

Moving on to the third prong of *Brown*, the court found that the officers' inventory search was not subterfuge for a search. However, it is notable that the officers only recorded that the van contained "CASH and FIREARMS."[111] It is difficult to rationalize how recording an unlisted amount of cash and the generalized term "firearms" would help protect the owner's items or insulate the police department from a false claim of theft.[112] Moreover, the fact that they stopped searching upon discovering evidence they believed could be attached to a crime hardly elucidates whether the search was aimed to secure the contents of the car; just as the opposite (continuing to search) would not be proof that the officers aimed to gather incriminating evidence. Overall, the Fourth

105. *Id.* at 235.

106. *Id.*

107. Brief of Appellant, *supra* note 28, at 28.

108. *Treisman*, 71 F.4th at 235.

109. Reply Brief of Appellant at 1–2, *Treisman*, 71 F.4th 225 (No. 21-4687), 2022 WL 15522254, at *1–2.

110. Cady v. Dombrowski, 413 U.S. 433, 447 (1973) ("The fact that the protection of the public might, in the abstract, have been accomplished by 'less intrusive' means does not, by itself, render the search unreasonable.").

111. *Treisman*, 71 F.4th at 236.

112. Short, *supra* note 49, § 2(a) (explaining that proposed rationales of inventory searches are "the protection of the owners, and as a safeguard against claims of loss or damage").

Circuit's reasoning in *Treisman* was too shallow and ignored the nuance surrounding the CCD. This black-and-white approach to the CCD has inadvertently expanded its reach in potentially harmful ways illuminated below.

IV. NEGATIVE EFFECTS OF EXTENDING THE CCD IN THIS MANNER

Police officers' role in society is dynamic—sometimes they are acting as enforcers, while other times they are acting as protectors, and thus taking care of the community.[113] But are these two roles truly so different that they can be "totally divorced" from one another? When officers arrest someone committing a burglary, they are enforcing laws prohibiting burglary, but they are *also* protecting the people in that region from having their personal property stolen. Enforcing the law—particularly with the safety of others in mind—may be so inextricably linked to the role of protector that, while doing so, police officers are nearly always *inherently* protecting the community.[114] To clarify, "[i]f the general test of reasonableness were held to apply whenever the police activity involved the protection of some portion of the public, then there would be very little left of the warrant requirement because so few law enforcement activities are completely separate from community caretaking."[115]

Occasionally officers will be playing both the role of protector and enforcer, but it will be clear that their protection was not entirely divorced from their role as enforcer. Thus, the CCD will clearly not apply. For example, when officers arrest an individual for illegally gambling, they are not really protecting anyone from harm they did not consent to; they are simply enforcing the law. However, as exemplified in *Treisman*, there will be situations where the line between enforcer and protector is not clearly distinguishable. In these blurrier circumstances, if the disputed police actions would not be authorized under their role as enforcer because they did not follow the correct procedures, courts may now be tempted to use the CCD as a post hoc justification of the officer's actions.

A post hoc rationalization of unjustified actions will ensure the evidence collected could survive a motion to suppress, but more importantly will wrongfully incentivize courts to turn a blind eye to police misconduct if the officers can successfully argue that their actions were reasonable under the circumstances. Ultimately, this is an impracticable result. It is too easy to argue

113. A study found that the police and the public hold different views about police officers' primary role in society. When asked to identify the primary role of the police between enforcer, protector, or both, eight percent of police officers saw themselves as primarily enforcers, whereas twenty-nine percent of the public saw police officers as enforcers. RICH MORIN, KIM PARKER, RENEE STEPLER & ANDREW MERCER, BEHIND THE BADGE 76 (2017), https://www.pewresearch.org/wp-content/uploads/sites/20/2017/01/Police-Report_FINAL_web.pdf [https://perma.cc/E255-HVNS].

114. Dimino, *supra* note 71, at 1493.

115. *Id.*

that officers are acting to protect the community and not in an investigative manner. Further, there is no court-provided guidance about what circumstances affect the analysis.

Additionally, the result is impracticable because defendants will struggle to meaningfully dispute the reasonability of the officers' actions. In *Whren v. United States*,[116] the Supreme Court established that the subjective intentions of officers can play no role in probable-cause Fourth Amendment analyses of traffic stops.[117] Following *Whren*, the Supreme Court extended this holding to assert that those subjective intentions should not affect Fourth Amendment reasonableness analyses.[118] So, it follows that in situations where officers performed a search justified by the CCD, defendants will likely struggle to prove whether the officers had ulterior motives because the courts are not to evaluate the subjective intentions of the officers—just whether the search was objectively reasonable. This is clearly in tension with the CCD's requirement that the inventory search be in good faith, and not subterfuge for an investigatory search. How is the defendant to meet their burden and prove that the search was not performed in good faith when the court is not to consider evidence exhibiting the subjective intentions of the officers?

Treisman's holding has far-reaching implications. The court repeatedly mentioned it was reasonable under the circumstances but failed to provide guidance on what circumstances mattered—how far was the CCD stretched? This is especially concerning because it was so unclear throughout the opinion *whom* the police were protecting. The Fourth Circuit's lack of precision and clarity can have truly scary implications that do not end with Treisman as an individual. As the Supreme Court recently acknowledged, "this recognition that police officers perform many civic tasks in modern society was just that—a recognition that these tasks exist, and not an open-ended license to perform them anywhere."[119]

For example, the court argued that the initial entrance into the car was reasonable because they saw a suitcase, it was hot outside, and the car had an out-of-state license plate. So, can officers now enter vehicles as they please when they see a suitcase in a car on a very hot day? What other "suspicious" circumstances must be present? Pretext is clearly a latent issue within this case and the broader context of the CCD. In *Treisman*, when listing off suspicious items within the van, the court mentioned that the officers located a book about

116. 517 U.S. 806 (1996).

117. *Id.* at 813 ("Subjective intentions [of individual officers] play no role in ordinary, probable-cause Fourth Amendment analysis.").

118. *See, e.g.*, Brigham City v. Stuart, 547 U.S. 398, 404 (2006); Bond v. United States, 529 U.S. 334, 338 n.2 (2000); Graham v. Connor, 490 U.S. 386, 397 (1989).

119. Caniglia v. Strom, 593 U.S. 194, 199 (2021).

Islam.[120] The mention of this book as a suspicious attendant circumstance indicates that the officers may have had ulterior motivations not on the record. While this is speculation with respect to *Treisman*, this further solidifies the point that even though the CCD theoretically requires a good faith search with no investigatory purposes, the subjective—and unconstitutional—intentions of the officers could inform the decision to search. This is especially problematic if the officers know they can later hide behind suspicious circumstances and a weak claim of protecting the public.

While it is well-established that cars receive less protection than other effects under the Fourth Amendment, allowing entry because of the temperature, a suitcase, and an out-of-state license plate appears to be an unsupported derogation from the case law. These same issues arise if courts read *Treisman* to say the officers were authorized to perform an inventory search because they were acting to protect the general public. This allows officers to rationalize entrance of vehicles if they see an item they believe is a threat to the public. It is important to consider the implications this decision has on lawful gun owners. Is the mere sight of a legally owned gun through a window enough reason to conduct a search to protect the community? This holding presents a potential clash between the Second Amendment right to bear arms and a police officer's ability to conduct warrantless searches to protect the community. Even if the weapon is within someone's closed vehicle, if it is plainly visible and the officers can argue that enough of the attendant circumstances were suspicious, the officers can utilize this holding to rationalize an initial entrance into vehicles. This chips away at the protections supposedly provided by both the Second and Fourth Amendments.

CONCLUSION

While citizens may simply consider the role of the police force to include enforcing laws and maintaining public order,[121] police officers are increasingly expected to play the role of a protector in society. Considering these shifting roles, the Fourth Amendment armor must be strengthened by requiring a higher standard of specificity and a more direct balancing test of privacy and governmental interests when implicating the CCD. However, the decision in *United States v. Treisman* does just the opposite—it further opens the door for police to abuse the privacy rights of citizens under the guise of community caretaking. If the CCD continues down this track and proceeds to expand and

120. United States v. Treisman, 71 F.4th 225, 229 (4th Cir. 2023).

121. MORIN ET AL., *supra* note 113, at 76–77.

encapsulate more situations, citizens will be afforded less privacy from governmental intrusion.

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