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## WHEN THE SUPREME COURT DEPARTS FROM ITS TRADITIONAL FUNCTION

Isaac J. Colunga\*

### I. INTRODUCTION

Generally, state courts can offer more protections under their own state laws than under the Federal Constitution.<sup>1</sup> Sometimes, however, state courts extend that sentiment to decisions based solely on federal law. They do so either by interpreting the Federal Constitution more broadly or perhaps by adding their own state requirements to a federal question. What results is “a competing constitutional vision,” through which state courts fill the void where federal laws fail to adequately protect their citizens’ civil rights. But these decisions are not unyielding.<sup>2</sup>

Starting in the late-1970s, the United States Supreme Court began reversing state court judgments that applied an expansive interpretation of federal law in favor of state citizens. In doing so, the Supreme Court strayed from its traditional role. In those instances that it reversed the state court judgments, it did not expound new law, it did not curtail state officials from mistreating defendants, and it did not ensure that a person who sought to vindicate a federal right had been properly heard. Instead, the Supreme Court simply reviewed the facts of each case and found fault with the state court’s application of federal law.<sup>3</sup> This happened most recently in *Michigan v. Fisher*.<sup>4</sup>

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<sup>1</sup> See *Ohio v. Robinette*, 519 U.S. 33, 44 (1996) (Ginsburg, J., concurring) (“It is incumbent on a state court, therefore, when it determines that its State’s laws call for protection more complete than the Federal Constitution demands, to be clear about its ultimate reliance on state law.”); *State v. Debooy*, 996 P.2d 546, 549 (Utah 2000) (“[W]e have stated that we will not hesitate to give the Utah Constitution a different construction [than the U.S. Constitution] where doing so will more appropriately protect the rights of this state’s citizens.”); see also William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 491 (1977) (advocating that state courts should have the opportunity to provide more protections under their state laws); cf. David J. Robinson, *Admissibility of Government Wiretaps After People v. Coleman*, 98 ILL. B.J. 44, 45 (Jan. 2010) (“The crucial distinction between the Illinois proscription against eavesdropping and its federal counterpart is that under the Illinois statute, both parties to the conversation must agree to have their conversation recorded, while under the federal statute only one party need consent.”).

<sup>2</sup> Justin R. Long, *Demosprudence, Interactive Federalism, and Twenty Years of Sheff v. O’Neill*, 42 CONN. L. REV. 585, 588 (2009) (citing Lawrence Friedman, *The Constitutional Value of Dialogue and the New Judicial Federalism*, 28 HASTINGS CONST. L.Q. 93, 95 (2000)).

<sup>3</sup> Vincent Martin Bonventre, *Changing Roles: The Supreme Court and the State High Courts in Safeguarding Rights*, 70 ALB. L. REV. 841, 846-50 (2007) (collecting cases in which the

There, the Supreme Court overruled a state court decision that employed an expansive interpretation of the emergency aid doctrine, thus concluding that local authorities, despite what the state courts said, had not violated the defendant's Fourth Amendment rights.<sup>5</sup> Critics maintain that this sort of appellate review has dramatically altered the relationship between state tribunals and the Supreme Court.<sup>6</sup> Thus, using *Michigan v. Fisher* as a primary example, this article attempts to explain how this relationship has been altered.

Warrantless searches have long been the subject of intense courtroom drama. Traditionally they are not allowed and even abhorred,<sup>7</sup> unless of course the facts of a particular case justify the application of one of the few exceptions to their bar.<sup>8</sup> But if the facts do not support an exception, a defendant more often than not can stave off conviction by moving to quash any evidence that the state may have acquired through the warrantless search. There is nothing unique about this scenario, as it is played out routinely in state and federal courtrooms across the country.

What is unique, however, is the set of circumstances that underlies each case. Typically, when considering a motion to quash based on an unlawful search, the trial court will conduct an evidentiary hearing to determine whether the police officers involved in the incident entered

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Supreme Court found fault with state court decisions to protect their citizens' liberties excessively).

<sup>4</sup> 130 S. Ct. 546 (2009).

<sup>5</sup> *Id.* at 549 (explaining that "[t]he Michigan Court of Appeals required more than what the Fourth Amendment demands").

<sup>6</sup> See Bonventre, *supra* note 3, at 846; see also *Michigan v. Long*, 463 U.S. 1032, 1069 (1983) (Stevens, J., dissenting) ("Until recently we had virtually no interest in cases of this type."). Stevens is referring to cases in which the state courts did not mistreat its citizen, but protected him or her under federal law. *Long*, 463 U.S. at 1068-69 (Stevens, J., dissenting).

<sup>7</sup> *Groh v. Ramirez*, 540 U.S. 551, 559 (2004) (explaining that it is a "basic principle of Fourth Amendment law" that searches and seizures inside a home without a warrant are presumptively unreasonable"); *Coolidge v. New Hampshire*, 403 U.S. 443, 474 (1971) (stating that "a search or seizure carried out on a suspect's premises without a warrant is *per se* unreasonable, unless the police can show" an exception); see also *United States v. U.S. Dist. Court (Plamondon)*, 407 U.S. 297, 313 (1972) ("[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed . . .").

<sup>8</sup> See, e.g., *Welsh v. Wisconsin*, 466 U.S. 740, 750 (1984) (clarifying that courts have recognized only a few emergency exceptions that justify warrantless searches); see also *Michigan v. Tyler*, 436 U.S. 499, 509 (1978) (finding warrantless entry justified where ongoing fire was present); *United States v. Santana*, 427 U.S. 38, 42-43 (1976) (holding that hot pursuit of a fleeing felon justifies a warrant search); *Schmerber v. California*, 384 U.S. 757, 770-71 (1966) (noting that officers may enter a home without a warrant to impede the destruction of evidence).

the defendant's home lawfully.<sup>9</sup> At this point the state usually argues that an exception applies justifying the warrantless search. On the other hand, the defendant argues that the alleged exception does not apply making the officers' search an intrusion on the defendant's privacy. The trial court may consider not only the physical circumstances of each case but also the intent of the police officers, which the parties may establish using oral testimony and perhaps a detailed description of the scene.<sup>10</sup> With this backdrop, the trial court makes credibility determinations, considers the effectiveness of the parties' witnesses, and ultimately decides the issue while the evidence is fresh in its mind.

On appeal, the process is one step removed. The parties and the court essentially rely on a lifeless record, through which the losing party challenges the trial judge's findings, while the appellate court reviews the circumstances and testimony anew using two different standards of review. As to the trial court's factual findings, the standard is clear error.<sup>11</sup> And as to the trial court's legal conclusions, the standard is *de novo*.<sup>12</sup> Either way, the parties will characterize the evidence in the light most favorable to their clients. The state again argues for an exception, and the defendant again takes the opposing view.

Now, let us say that in the above scenario the state trial court and appellate courts all found that the local authorities violated the defendant's rights—that the warrantless search was unfounded, no exception applied, and that the evidence obtained pursuant to the unlawful search had to be quashed. Put another way, the state trial and appellate courts found that federal law protected the defendant citizen

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<sup>9</sup> E.g., Brittany H. Southerland, Note, *Lying To Catch the Bad Guy: The Eleventh Circuit's Likely Adoption of the Clear Error Standard of Review for A Denial of a Franks Hearing*, 24 GA. ST. U. L. REV. 843, 855 (2008) (explaining that in challenging a search warrant, the Eleventh Circuit, for one, recognizes that holding an evidentiary hearing lies within the sound discretion of the trial court); see also *People v. Fisher*, No. 256027, 2005 WL 3481454, at \*1 (Mich. Ct. App. Dec. 20, 2005) ("A court deciding a suppression motion must ordinarily convene its own evidentiary hearing to decide the matter.").

<sup>10</sup> Matthew Bell, *Fourth Amendment Reasonableness: Why Utah Courts Should Embrace the Community Caretaking Exception to the Warrant Requirement*, 10 BOALT J. CRIM. L. 3, 39 (2005) ("As a general rule, courts evaluate 'challenged searches under a standard of objective reasonableness without regard to the underlying intent or motivation of the officers involved.'"). Bell goes on to explain that, in California, the trial courts consider the officers' motivation, in addition to their intent. *Id.* If the officers intended to solve a crime in conducting the search, the community-caretaking exception does not apply. *Id.*; see also *Scott v. United States*, 436 U.S. 128, 138 (1978) (noting that "the circumstances, viewed objectively," may justify the officer's actions).

<sup>11</sup> *People v. Fisher*, No. 276439, 2008 WL 786515, at \*1 (Mich. Ct. App. Mar. 25, 2008) ("In reviewing a trial court's decision following a suppression hearing, we review the trial court's factual findings for clear error, but review the legal conclusions *de novo*.").

<sup>12</sup> *Id.*

from the improper acts of a state actor.<sup>13</sup> What can the state's attorney argue in response if indeed the state tribunals have interpreted the defendant's constitutional rights too broadly? Having exhausted its remedies in the state appellate courts, the state's only remaining forum in which to challenge the ruling is the United States Supreme Court. And in *Michigan v. Fisher*, that is precisely what the State of Michigan did.

This Article examines the ramifications of these types of challenges, which in the end do not curtail the states from imposing an unconstitutional burden on their citizens.<sup>14</sup> Rather, they curtail the states from providing their citizens greater protections under the Fourth Amendment. To illustrate this point, Part II will review briefly the concepts underlying the Fourth Amendment while comparing the federal requirements to prove the emergency aid exception to a warrantless search with the requirements in state court. With this background in mind, Part III will conduct a close examination of *Michigan v. Fisher*, recounting the specific facts of the case and, of course, the Court's ultimate disposition. Part IV considers rather closely Justice Stevens' dissent in *Michigan v. Fisher*, which critiques the Supreme Court's recent trend. This section provides the reader with a unique look at the clash between the uniformity in federal law and the necessary constitutional protections proffered by the state courts. In the end, this article sides with Justice Stevens and argues, quite simply, that the Supreme Court's review of these cases is needless.

## II. COMMUNITY-CARETAKING, EMERGENCY AID, AND WARRANTLESS SEARCHES

At the core of the Fourth Amendment<sup>15</sup> is the security of one's right to privacy and the requirement of a warrant to conduct a search of one's home and effects. In *Katz v. United States*, Justice Stewart affirmed "that

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<sup>13</sup> See *Michigan v. Long*, 463 U.S. 1032, 1068 (1983) (Stevens, J., dissenting) (clarifying that certain search and seizure cases involve the state upholding a citizen's right, "finding the citizen to be protected under both federal and state law"); cf. *State v. Watts*, 750 P.2d 1219, 1221 n.8 (Utah 1988) ("[C]hoosing to give the Utah Constitution a somewhat different construction may prove to be an appropriate method for insulating this state's citizens from the vagaries of inconsistent interpretations given to the [F]ourth [A]mendment by the federal courts.").

<sup>14</sup> See *Long*, 463 U.S. at 1069 (explaining that the Court's prior inquiries involved making sure that the states did not vitiate their citizens' constitutional rights).

<sup>15</sup> U.S. CONST. amend. IV ("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.").

searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.”<sup>16</sup> This famous pronouncement is conventionally known as the “warrant preference theory”<sup>17</sup> of the Fourth Amendment, which confirms that warrantless searches are presumptively unreasonable provided an exception does not exist. After *Katz*, scholars usually discussed the theory in the context of traditional criminal investigations, wherein law enforcement officials were acting in an effort to stop individuals that were suspected of having committed a crime.<sup>18</sup> At the same time, a growing debate surrounded law enforcement officers’ other duties, those that did not involve investigating crimes, but protecting and serving the public.<sup>19</sup>

For example, officers are often called upon to assist motorists with broken down vehicles, to mediate noise disputes, to respond to stray animals, or to render aid to a sick pedestrian.<sup>20</sup> For the most part, these activities are entirely non-investigatory and fall outside of the crime-control paradigm. Even still, in many instances these activities involve intrusions into individuals’ homes, vehicles, or businesses.<sup>21</sup>

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<sup>16</sup> *Katz v. United States*, 389 U.S. 347, 357 (1967) (stating that warrantless searches are unreasonable, though “subject only to a few specifically established and well-delineated exceptions”) (citing several cases in which the Supreme Court “emphasized that the mandate of the [Fourth] Amendment requires adherence to judicial processes”) (alteration in original).

<sup>17</sup> Debra Livingston, *Police, Community Caretaking, and the Fourth Amendment*, 1998 U. CHI. LEGAL F. 261, 262 (noting the “warrant theory” or “warrant preference theory”).

<sup>18</sup> Michael R. Dimino, Sr., *Police Paternalism: Community Caretaking, Assistance Searches, and Fourth Amendment Reasonableness*, 66 WASH. & LEE L. REV. 1485, 1486 (2009) (explaining that crime-stopping “forms the backdrop for much of our thought about policework and underlies much Fourth Amendment doctrine”) (footnote omitted).

<sup>19</sup> *Bell*, *supra* note 10, at 3; *see also* *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973) (“Local police officers, unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.”). *See generally* PETER K. MANNING, *POLICE WORK: THE SOCIAL ORGANIZATION OF POLICING* (2d ed. 1997) (discussing some of the other tasks that police officers are charged with, including helping citizens, maintaining order and the smooth flow of traffic and pedestrians, and routine patrol).

<sup>20</sup> *See* Livingston, *supra* note 17, at 272 (listing a host of activities that constitute “community caretaking” functions).

<sup>21</sup> *See id.* at 261 (describing an example in which police officers entered an apartment to render aid to a woman that was having a baby). Livingston further explains that “[i]t is not uncommon for police to intrude into the homes of elderly people in response to calls from anxious relatives unable to locate them” and that “[p]olice in many places routinely enter commercial premises found inexplicably open at night to secure the premises and to notify the owners that their property has been left vulnerable to invasion.” *Id.* at 272–73.

Recognizing this, the federal courts sought to clarify whether police officers enjoyed an exception to the warrant requirement in those instances that they entered or searched a car, residence, or commercial premises when acting as a “community-caretaker” as opposed to an investigator or crime-stopper.<sup>22</sup>

Over time, courts operating under the warrant preference theory “have validated many community caretaking intrusions of this type on the ground that they fall within variously formulated ‘exigent circumstances,’ ‘emergency,’ and ‘rescue’ exceptions to the probable-cause-and-warrant formula.”<sup>23</sup> So much is true, though we need not consider the nuances of each of these exceptions. Rather, because the focus of this inquiry centers on the Supreme Court’s decision in *Michigan v. Fisher*, it is important that we consider the primary exception to the warrant requirement in that case – the emergency aid exception.

#### A. Emergency Aid Exception

The emergency aid doctrine originated in dictum found in *Johnson v. United States*, where Justice Jackson said, “[t]here are exceptional circumstances in which, on balancing the need for effective law enforcement against the right of privacy, it may be contended that a magistrate’s warrant for search may be dispensed with.”<sup>24</sup> Since that time the Supreme Court has stated, in clearer terms, that the emergency aid doctrine allows law enforcement officers to enter a residence or other establishment without a warrant so that they may render emergency aid to an injured occupant or to protect an occupant from imminent harm or injury.<sup>25</sup> This conduct is justified, said the Supreme Court, in light of the

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<sup>22</sup> Courts have viewed the authority to enter a premises in response to cries for help as “inherent in the very nature of their duties as peace officers.” *United States v. Barone*, 330 F.2d 543, 545 (2d Cir. 1964); *see also* *Wayne v. United States*, 318 F.2d 205, 212 (D.C. Cir. 1963) (“[A] warrant is not required to break down a door to enter a burning home to rescue occupants or extinguish a fire, to prevent a shooting or to bring emergency aid to an injured person.”).

<sup>23</sup> *Livingston*, *supra* note 17, at 276.

<sup>24</sup> 333 U.S. 10, 14–15 (1947); *see also* *Root v. Gauper*, 438 F.2d 361, 364 (8th Cir. 1971) (noting that the emergency aid doctrine “had its origin in a dictum enunciated by Justice Jackson”). The Supreme Court later gave us an example of one possible emergency situation in which the doctrine would apply, such as “where the officers, passing by on the street, hear a shot and a cry for help and demand entrance [to a residence] in the name of the law.” *McDonald v. United States*, 335 U.S. 451, 454 (1948).

<sup>25</sup> *Mincey v. Arizona*, 437 U.S. 385, 393–94 (1978); *see also* *Root*, 438 F.2d at 364 (“[T]he emergency or exigency doctrine may be stated as follows: 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.”).

underlying and well-recognized need to protect or preserve life.<sup>26</sup> This need is so compelling, in fact, that at least one court has suggested that police officers have an affirmative duty to act in emergency situations.<sup>27</sup> In line with this reasoning, while recognizing the need to protect and preserve life, numerous federal and state courts have upheld warrantless entries in emergency situations.<sup>28</sup>

What is more, in applying the emergency aid exception, some courts consider it a variation of the exigent circumstances exception, while others see it as a subcategory of the community-caretaking doctrine.<sup>29</sup> This distinction is important. Community-caretaking, unlike traditional crimefighting, does not require a showing of probable cause. On the other hand, to validate a warrantless entry under the exigent circumstances exception, the state is required to show the existence of both probable cause and exigency.<sup>30</sup> This is a much heavier burden for the state, especially if law enforcement officers conducted a warrantless entry to stop a minor offense.<sup>31</sup> Thus, when determining whether the

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<sup>26</sup> *Mincey*, 437 U.S. at 392; *United States v. Holloway*, 290 F.3d 1331, 1335 (11th Cir. 2002) (discussing *Mincey*, but first observing, “[t]he most urgent emergency situation excusing police compliance with the warrant requirement is, of course, the need to protect or preserve life”); see also *State v. Frankel*, 847 A.2d 561, 568 (N.J. 2004) (“The emergency aid doctrine is derived from the commonsense understanding that exigent circumstances may require public safety officials, such as the police . . . to enter a dwelling without a warrant for the purpose of protecting or preserving life, or preventing serious injury.”).

<sup>27</sup> *Georgia v. Randolph*, 547 U.S. 103, 118 (2006) (“[I]t would be silly to suggest that the police would commit a tort by entering [a residence] . . . to determine whether violence (or threat of violence) has just occurred or is about to (or soon will) occur . . . .”); see also *Barone*, 330 F.2d at 545 (“Indeed it is obvious that had the patrolmen been denied entry to the apartment they would have had the right, if not the duty, to gain entry forcibly.”); *Wayne*, 318 F.2d at 213 (noting “that the police had a right—if not a duty—to assume” that an emergency was taking place and that they should intervene).

<sup>28</sup> See *United States v. Hughes*, 993 F.2d 1313, 1315 (7th Cir. 1993) (allowing warrantless entry where police responded to a report that a woman and child were in danger in a crack house); *United States v. Gillenwaters*, 890 F.2d 679, 682 (4th Cir. 1989) (holding warrantless entry justified where police enter in response to a stabbing victim); *United States v. Martin*, 781 F.2d 671, 675 (9th Cir. 1985) (upholding entry based on explosion in apartment); *Mann v. Cannon*, 731 F.2d 54, 59 (1st Cir. 1984) (allowing search where children had open access to controlled substances); *United States v. Riccio*, 726 F.2d 638, 643 (10th Cir. 1984) (holding entry justified so that police could give emergency aid to someone they had just shot); *Johnson v. State*, 386 So. 2d 302, 304 (Fla. Dist. Ct. App. 1980) (allowing search where police responded to a report of a dead body); *State v. Carlson*, 548 N.W.2d 138, 143 (Iowa 1996) (finding search justified when police acted pursuant to missing person report).

<sup>29</sup> *Bell*, *supra* note 10, at 16.

<sup>30</sup> E.g., *Bates v. Harvey*, 518 F.3d 1233, 1245 (11th Cir. 2008).

<sup>31</sup> *Welsh v. Wisconsin*, 466 U.S. 740, 749–50 (1984) (“[T]he police bear a heavy burden when attempting to demonstrate an urgent need that might justify warrantless searches or arrests.”). The Supreme Court in *Welsh* went on to state that the necessity for a search without a warrant, pursuant to the exigent circumstances exception, is significantly



emergency aid exception applies to a warrantless search, the question is not whether the officer acted with probable cause when he or she entered the premises, but whether the officer acted reasonably when entering the premises to render aid or to protect an occupant.<sup>32</sup>

Reasonableness is the keystone of the emergency aid exception. A reviewing court may frame the inquiry as follows: when entering the premises, “[g]iven the known facts, would a prudent and reasonable officer have perceived a need to act in the proper discharge of his or her community caretaking functions?”<sup>33</sup> If the court answers this question in the affirmative, the warrantless search is usually justified under the emergency aid exception.

### B. *The Officers’ Intent*

Let us observe the above question from another perspective. A plain reading of the question reveals a second caveat beyond reasonableness – the officer’s perception. This realization prompted many courts to begin the reasonableness inquiry with the question of what exactly the officer perceived. The officer’s state of mind when conducting the search gave courts a clue as to whether the officer’s conduct was indeed reasonable. Working under this construct in *United States v. Barone*, the Second Circuit hinted that the emergency aid exception would not apply to cases in which officers entered the premises with the intent to search and arrest.<sup>34</sup> So, if an officer intended to search a residence pursuant to his or her investigatory or crime-solving duties, then the emergency aid exception would not apply and the state would have to justify the search outside of the exception’s confines.<sup>35</sup>

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diminished when the gravity of the offense in progress is trivial, or does not involve violence or threats of violence. 466 U.S. at 751–52.

<sup>32</sup> Bell, *supra* note 10, at 16 (“This analytical distinction also explains why courts do not require probable cause when evaluating community caretaking acts including rendering emergency aid; instead the inquiry is governed by the Fourth Amendment mandate that officers act reasonably.”).

<sup>33</sup> *People v. Ray*, 981 P.2d 928, 937 (Cal. 1999).

<sup>34</sup> 330 F.2d 543, 545 (2d Cir. 1964) (“The right of the police to enter and investigate in an emergency *without the accompanying intent to either search or arrest* is inherent in the very nature of their duties as peace officers, and derives from the common law.”) (emphasis added).

<sup>35</sup> Alison Sanders, Note, *Constitutional Law: State v. Nemeth – The Community Caretaker Exception to the Fourth Amendment*, 32 N.M. L. REV. 291, 298 (2002). In explaining the community-caretaking exception in New Mexico, Sanders states that for the exception to apply, “[t]he 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.” *Id.* It is worth mentioning that the court in *State v. Nemeth* was concerned that if the intent

In line with this decision, many courts established a three-factor test to determine whether the emergency aid exception applied, many of which included a factor that turned on the officer's intent. For example, in the oft-cited case *People v. Mitchell*, the New York Court of Appeals summarized the basic elements of the emergency aid exception as follows:

- (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.<sup>36</sup>

Using this sort of test, intent becomes a crucial part of the analysis. In the end if the court finds that an officer was acting as a crime-fighter, not as a community-caretaker, the exception does not apply.

All of this changed, however, after the United States Supreme Court's decision in *Brigham City v. Stuart*.<sup>37</sup> In *Brigham City*, the Court recognized a gaping disparity in the standards used by both state and federal courts when determining the validity of warrantless searches in an emergency situation. Thus, it sought to articulate "the appropriate Fourth Amendment standard" that courts would use in their analyses from then on.<sup>38</sup>

The case involved a scuffle that broke out at approximately 3:00 a.m. inside the home of a Brigham City, Utah resident.<sup>39</sup> Authorities dispatched four officers to the home in response to a call about a loud party.<sup>40</sup> As the officers arrived, they heard shouting coming from inside; thus, they "proceeded down the driveway to investigate."<sup>41</sup> Behind the

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element had not been established, law enforcement officers could use the emergency aid exception as a pretext for unjustified, warrantless searches. *State v. Nemeth*, 23 P.3d 936, 945 (N.M. Ct. App. 2001).

<sup>36</sup> 347 N.E.2d 607, 609 (N.Y. 1976). "The second requirement is related to the first in that the protection of human life or property in imminent danger must be the motivation for the search rather than the desire to apprehend a suspect or gather evidence for use in a criminal proceeding." *Id.* at 610.

<sup>37</sup> 547 U.S. 398 (2006).

<sup>38</sup> *Id.* at 402. The Court referenced state and federal cases and quoted the different standards used by each court to illustrate the disparity. *Id.*

<sup>39</sup> *Id.* at 400.

<sup>40</sup> *Id.* at 400–01.

<sup>41</sup> *Id.* at 401.

home, the officers entered the backyard and observed, through a screen door and two windows, a fight taking place inside.<sup>42</sup> One of the officers witnessed four individuals trying to restrain a juvenile but having trouble doing so.<sup>43</sup> The juvenile then broke free and punched one of the individuals in the face.<sup>44</sup> After the punch, the officers saw the victim spit blood into a nearby sink, and, as he did so, the other individuals restrained the attacker who continued to struggle, pushing him firmly against a refrigerator.<sup>45</sup> At that point, the officers took action.

One of the officers initially pushed open the screen door and announced his presence, but amidst the fracas nobody noticed. The officers then entered the kitchen and announced their presence again. This agitated the individuals because the officers had entered the residence without permission.<sup>46</sup> Finally, despite the individuals' opposition, the officers entered the fray and arrested the individuals and charged them with "contributing to the delinquency of a minor, disorderly conduct, and intoxication."<sup>47</sup>

#### 1. Considering Intent in the Utah Supreme Court

In the Utah trial court, the individuals moved to suppress all evidence obtained after the officers entered the residence without the individuals' permission. Their argument was a familiar one: because the officers lacked either a warrant or consent to enter the home, the officers' entry violated the Fourth Amendment.<sup>48</sup> As it turned out, the state trial court agreed with the defendants. The State appealed to the Utah Court of Appeals. Again the defendants were successful.<sup>49</sup> With that, the State took the case to the Utah Supreme Court, which again sided with the defendants.

In affirming the Utah Court of Appeals, the Utah Supreme Court first noted that its goal of providing practitioners with useful guidance in search and seizure cases is often "handicapped" because practitioners, for some reason, commonly fail to challenge the underlying search by

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.* (characterizing the person being restrained as a "juvenile"). The Utah trial court noted in its Order that the officers had probable cause to enter the backyard of the home because they observed through a slat fence two juveniles drinking alcohol in the backyard. *Brigham City v. Stuart*, 57 P.3d 1111, 1112 (Utah Ct. App. 2002).

<sup>44</sup> *Brigham City*, 547 U.S. at 401.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

way of the Utah Constitution.<sup>50</sup> This was surprising, said the Utah Supreme Court, because while Utah courts often interpreted the state constitutional bar to warrantless searches similarly to the federal bar, the protections under state law were or could be greater than those guaranteed under federal law.<sup>51</sup> With this preface, the Utah high court took up two issues on appeal: (1) whether the officers' warrantless entry was justified under the emergency aid doctrine, and (2) whether the facts of the case were sufficient to present exigent circumstances.<sup>52</sup> As to the first inquiry, the Utah Supreme Court reviewed the appellate court's determination pursuant to Utah's three-prong test, which, like the test found in *People v. Mitchell*,<sup>53</sup> required a finding that "[t]he search [was] not primarily motivated by intent to arrest and seize evidence."<sup>54</sup>

At the center of the high court's analysis was the degree of harm that the home's occupant suffered or would have suffered at the point the officers entered the home.<sup>55</sup> The Utah Supreme Court stressed that if a reviewing court found that the occupant's injuries were minor, the necessity to conduct a warrantless entry to render aid is diminished; thus, the emergency aid exception would not apply.<sup>56</sup> With this in mind, the Utah high court turned to the trial record, which revealed that just before the officers entered the home, a juvenile inside punched another individual in the face before the other occupants subdued him.<sup>57</sup> This, of course, resulted in relatively minor injuries to the occupant, with almost no chance that the occupant would suffer further injury. The Utah Supreme Court then concluded that the state could not invoke the

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<sup>50</sup> *Brigham City v. Stuart*, 122 P.3d 506, 510 (Utah 2005) ("Our aspiration to provide useful guidance to those charged with the day-to-day responsibility of putting search and seizure law into practice is handicapped by the manner in which search and seizure cases are presented to us.").

<sup>51</sup> *Id.* The Utah Supreme Court added the following statement with respect to practitioners' failure to present challenges under the Utah Constitution:

Where the parties do not raise or adequately brief state constitutional issues, our holdings become inevitably contingent. They carry within them an implicit qualification that if properly invited to intervene, our state's Declaration of Rights might change the result and impose different demands on police officers and others who in a very real sense are the everyday guardians of constitutional guarantees against unreasonable searches and seizures.

*Id.*

<sup>52</sup> *Id.* at 512.

<sup>53</sup> 347 N.E.2d 607, 609 (N.Y. 1976).

<sup>54</sup> *Brigham City*, 122 P.3d at 512-13 (listing the elements that rendered lawful a warrantless entry under the emergency aid doctrine).

<sup>55</sup> *Id.* at 513.

<sup>56</sup> *Id.* ("Consequently, intrusions to administer aid to less severe injuries may render unconstitutional a search or seizure made incident to the warrantless entry.").

<sup>57</sup> *Id.*

emergency aid doctrine because there was nothing to support the notion that the officers found it necessary to render aid or medical assistance to the occupant that was punched in the face.<sup>58</sup> Under the circumstances, the court found that the officers could have only been acting in their law enforcement capacity, as the officers rendered no aid but certainly made arrests.<sup>59</sup>

## 2. The United States Supreme Court Vitiates the Intent Requirement

Having lost in the state courts, Utah appealed the decision to the United States Supreme Court. There, the defendants pointed out once again that the officers' entry was unreasonable and unjustified because the officers "were more interested in making arrests than quelling violence."<sup>60</sup> The inquiry then went right to the heart of Utah's intent requirement, which allowed the state courts to consider the officers' subjective motivations when determining the reasonableness of their entry. The Supreme Court quickly rejected this approach.

It explained that "[a]n action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, 'as long as the circumstances, viewed *objectively*, justify [the] action.'"<sup>61</sup> In this way, the Supreme Court made clear that a police officer's subjective motivation for conducting a search is irrelevant in a court's Fourth Amendment analysis.<sup>62</sup> Applying this principle to the facts in *Stuart*, the Supreme Court concluded that it was objectively reasonable for the officers to enter the residence and make arrests, as they had every reason to believe that the individual who was punched in the face might require help.<sup>63</sup> It became clear that objectivity became the Court's primary concern when it stated that "[n]othing in the Fourth Amendment required [the officers] to wait until another blow rendered someone 'unconscious' or 'semi-conscious' or worse before entering," given the officers' role to prevent violence and to restore order.<sup>64</sup>

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 514 ("[T]he circumstances known to the officers at the time of entry did not create a reasonable belief that emergency aid was required."). The Utah Supreme Court went on to discuss the application of the exigent circumstances exception, though for all present purposes we need not delve into that part of the opinion. *Id.* at 514-18. Also, two Justices of the Utah Supreme Court concurred in the majority's application of the emergency aid doctrine, but dissented as to its application of the exigent circumstances exception. *Id.* at 518-21. This has no bearing on this Article's analysis.

<sup>60</sup> *Brigham City v. Stuart*, 547 U.S. 398, 404 (2006).

<sup>61</sup> *Id.* (alteration in original) (quoting *Scott v. United States*, 436 U.S. 128, 138 (1978)).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 406.

<sup>64</sup> *Id.*

Justice Stevens concurred in the decision but nevertheless noted that “[f]ederal interests are not offended when a single State elects to provide greater protection for its citizens than the Federal Constitution requires.”<sup>65</sup> He was clearly concerned with the Supreme Court’s role in the decision, as he saw it as an opportunity for the Supreme Court to exercise judicial restraint, as opposed to having the last word in legal interpretation. For Justice Stevens, there was no need for the Supreme Court to intervene. He therefore stated that, despite his concurrence with the majority, he “remain[ed] persuaded that [his] vote to deny the State’s petition for certiorari was correct.”<sup>66</sup>

After *Brigham City*, it was lawful for police officers to enter a house or building without probable cause so long as they had an objectively reasonable basis for believing that there was a danger inside.<sup>67</sup> Their subjective intent was inconsequential. Indeed, armed with an honest belief regarding some danger, officers could enter a house or building and dispel that danger regardless of whether their primary motivation was to gather evidence or to make arrests.<sup>68</sup> These pronouncements, however, would not stay untested for long.

### III. *MICHIGAN V. FISHER*: AFFIRMING WHAT IS OBJECTIVELY REASONABLE

The United States Supreme Court’s decision in *Brigham City* forecasted how the Court would approach similar constitutional challenges in the future. Intent was no longer part of the analysis, at least not under federal law. Again, if the defendant challenged an officer’s entry under state law, the state court was free to consider the

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<sup>65</sup> *Id.* at 409 (Stevens, J., concurring).

<sup>66</sup> *Id.*; see *Michigan v. Long*, 463 U.S. 1032, 1067 (1983) (Stevens, J., dissenting) (“[It is] my belief that a policy of judicial restraint—one that allows other decisional bodies to have the last word in legal interpretation until it is truly necessary for this Court to intervene—enables this Court to make its most effective contribution to our federal system of government.”).

<sup>67</sup> Craig M. Bradley, *A Sensible Emergency Doctrine*, 42 TRIAL 60, 61 (Aug. 2006); see also *United States v. Washington*, 573 F.3d 279, 287 n.2 (6th Cir. 2009) (“[O]nce the police become aware of a battery, they need not wait to intervene until the threat becomes life-threatening lest a court hold there was no exigency.”).

<sup>68</sup> Bradley, *supra* note 67, at 61. Bradley also offers an example in which the exception would not apply—when “two officers hear a scream from a nearby apartment and hear someone say ‘Here’s Johnny’ in a menacing voice.” *Id.* at 62. If one officer stops the other officer from entering the apartment because he knows the voice came from a television playing the movie *The Shining*, then it would be unreasonable for the officers to believe a real emergency is present. *Id.*; see also *Georgia v. Randolph*, 547 U.S. 103, 118 (2006) (commenting that in a case involving domestic abuse an officer’s entry would be lawful, without a warrant or probable cause, if the officer had “good reason to believe” a threat of domestic violence existed).

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officer's intent in conducting the challenged search and to provide its citizens greater protections. As *Brigham City* showed, however, a challenge under the Fourth Amendment would yield a different result.

To illustrate this point, and to examine how the Supreme Court's role has changed when considering a constitutional challenge from a state court's interpretation of federal law, this section shall explore closely the Supreme Court's decision in *Michigan v. Fisher*. In doing so, this section will first examine the rulings in the Michigan state courts and then provide a detailed analysis of the Supreme Court's decision. This section will also reflect on Justice Stevens' dissent, in which he confirms his sentiment regarding the Supreme Court's changing role.

#### A. *Factual History*

*Fisher* involves a rather simple set of facts, which for the most part are taken from the evidentiary hearing that took place before the Michigan trial court. At the evidentiary hearing, a single police officer recounted the incident. He and another officer responded to a residence after receiving reports of unusual noises and erratic behavior.<sup>69</sup> Apparently, some time prior, a pedestrian approached the officers and complained that a man was "going . . . crazy" inside a home.<sup>70</sup> When the officers arrived at the residence and exited their vehicle, they immediately noticed that someone had "smashed out" several of the residence's windows.<sup>71</sup> Further, as the officers approached the house and surveyed the scene outside, they observed that some of the home's fence posts had been damaged and that a nearby truck had its front end "smashed," as though whoever was driving the truck struck the fence.<sup>72</sup> Upon inspection, the officers saw what they perceived to be fresh blood on the truck's hood and on some clothing that was still inside the truck.<sup>73</sup>

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<sup>69</sup> *People v. Fisher*, No. 256027, 2005 WL 3481454, at \*1 (Mich. Ct. App. Dec. 20, 2005). In 2005, the Michigan Appellate Court described the facts according to the criminal complaint filed with the trial court. *Id.* at \*1 n.1. At this point, the Michigan trial court had not yet conducted an evidentiary hearing with respect to defendant's motion to suppress; it simply suppressed the evidence from the bench. *Id.* at \*1. Defendant appealed, and the Michigan Appellate Court determined whether the trial court erred in deciding the issue without an evidentiary hearing. *Id.* Ultimately the Appellate Court found that it did. *Id.* at \*2.

<sup>70</sup> *People v. Fisher*, No. 276439, 2008 WL 786515, at \*1 (Mich. Ct. App. Mar. 25, 2008) (examining the trial court record). For some reason, the incident's factual account differs from court to court. The facts that we include here attempt to include details that the Michigan Appellate Court did not mention, while the Michigan trial court did, or vice versa.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*; see also *Fisher*, 2005 WL 3481454, at \*1 (describing that a nearby vehicle struck the fence and was parked near the front door of the residence).

<sup>73</sup> *Fisher*, 2008 WL 786515, at \*1.

From outside, the officers could see inside the home.<sup>74</sup> They heard and saw a man inside “walking around the residence screaming and throwing stuff.”<sup>75</sup> One officer added that he could hear objects breaking inside,<sup>76</sup> though he said nothing about the possibility of other individuals being present inside the home. As the officers advanced, they again observed what they perceived to be blood on the back door.<sup>77</sup> At that point, one of the officers knocked on the back door and announced the officers’ presence, but the man inside the home refused to answer.<sup>78</sup> When the officers persisted, the man responded with profanity and declared that he would not let the officers in without a warrant.<sup>79</sup> The officers decided to enter.

At the evidentiary hearing, the officer admitted that when the officers decided to enter the residence they did not know whether there was anyone else inside.<sup>80</sup> The officers were merely concerned “[b]ecause of the amount of blood [the officers] found on the outside” of the residence.<sup>81</sup> Notwithstanding this testimony, on cross-examination the officer admitted that he and the others did not observe a large amount of blood outside the home, but rather they observed “mere drops.”<sup>82</sup> When pressed, the officer also admitted “that he had not known whether defendant drove the truck at the scene, how the fence was damaged, or whether anyone in the house actually needed medical assistance.”<sup>83</sup>

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<sup>74</sup> *People v. Fisher*, 765 N.W.2d 19, 20 (Mich. 2009) (“The officers went to Allen Road and saw a man later identified as defendant, Jeremy Fisher, through the front window of a house . . .”).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* *But see Fisher*, 2005 WL 3481454, at \*1 (recounting from the criminal complaint, to which the officer attested, that the officer saw blood on the home’s front door).

<sup>78</sup> *Fisher*, 2008 WL 786515, at \*1.

<sup>79</sup> *Id.* (noting that the man answered with profanity); *see also Fisher*, 2005 WL 3481454, at \*1 (explaining that the officers induced the defendant “to state that he would not let them in if they did not have a warrant”).

<sup>80</sup> *Fisher*, 2008 WL 786515, at \*1.

<sup>81</sup> *Fisher*, 765 N.W.2d at 20 (quoting the trial court testimony) (alteration in original).

<sup>82</sup> *Fisher*, 2008 WL 786515, at \*2.

<sup>83</sup> *Id.* Before the evidentiary hearing, Judge Borello strongly disagreed with the majority’s decision to send the case back to the trial court to conduct an evidentiary hearing. *Fisher*, 2005 WL 3481454, at \*3 (Borello, J., dissenting). As to the emergency aid exception, Judge Borello found it unavailing, noting:

Plaintiff cites no authority for the proposition that whenever the police have a basis for supposing that a person has been injured, they are entitled to enter that person’s home without a warrant ostensibly to provide aid. Further, there is no indication that the police inquired about defendant’s condition, or observed any injury about him. Nor is there any suggestion that the police ever suspected that someone else in the house may have been injured.



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Despite all doubt, the officer testified that at some point he noticed a cut on the man's hand.<sup>84</sup> It remained unclear, however, when or how the officer observed the cut because the officers were yet to enter the residence. Initially, one of the officers pushed open the front door only a short distance because a piece of furniture blocked the door.<sup>85</sup> The officer yelled at the man to come to the door; he again responded with profanities.<sup>86</sup> The officers then pushed the door open approximately twelve to eighteen inches.<sup>87</sup> Then, as the testifying officer stepped forward, he heard a dog bark and looked to his right.<sup>88</sup> At that point he was able to see inside the home through the glass front door and observed the man sitting on a bed, raising a rifle, and pointing it directly at him.<sup>89</sup> The officers drew back immediately and left the scene.<sup>90</sup> When they returned with a warrant, the man surrendered quietly.<sup>91</sup>

*B. Michigan State Court Findings*

Authorities charged the man with assault with a dangerous weapon and possession of a firearm during the commission of a felony.<sup>92</sup> Prior to trial, the defendant moved to suppress the evidence of what the officers observed inside the house. The trial court initially granted the motion without conducting an evidentiary hearing.<sup>93</sup> The trial court was convinced, based solely on the transcript for the swearing out of the complaint, that the emergency aid exception did not apply and thus the officers' entry was unlawful.<sup>94</sup> The state appealed and the appellate court remanded the case so that the trial court could conduct a full evidentiary hearing.<sup>95</sup>

The second time around, the trial court heard the officers' live testimony and ultimately concluded that "based on what I've heard here,

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*Id.* at \*4.

<sup>84</sup> *Fisher*, 2008 WL 786515, at \*1 ("The officer described noticing a cut on defendant's hand.").

<sup>85</sup> *Fisher*, 2005 WL 3481454, at \*1.

<sup>86</sup> *Id.* (characterizing the man's statement as one of "defiance").

<sup>87</sup> *Id.*; *People v. Fisher*, 765 N.W.2d 19, 20 (Mich. 2009).

<sup>88</sup> *Fisher*, 765 N.W.2d at 20.

<sup>89</sup> *Id.*; *Fisher*, 2005 WL 3481454, at \*1 (noting that the officer "observed defendant raise a long gun and point it at him").

<sup>90</sup> *Fisher*, 2005 WL 3481454, at \*1.

<sup>91</sup> *Id.* (explaining that when the police returned with a search warrant the defendant surrendered without incident).

<sup>92</sup> *E.g.*, *People v. Fisher*, No. 276439, 2008 WL 786515, at \*1 (Mich. Ct. App. Mar. 25, 2008).

<sup>93</sup> *Fisher*, 2005 WL 3481454, at \*1.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

I'm even more convinced" that the search involved an unlawful entry.<sup>96</sup> Again, the trial court granted the defendant's motion to suppress and, again, the state appealed the judgment. In deciding whether the emergency aid exception applied, and in affirming the trial court's findings, the appellate court confirmed "that the situation the police witness described in this case did not rise to a level of emergency justifying the warrantless intrusion into a residence."<sup>97</sup> One of the justices filed a dissent, however, believing that the evidence was sufficient to show that it was reasonable for the officer to believe that the man was in need of assistance, which is all the emergency aid exception requires.<sup>98</sup> For the dissent, it made no difference that the evidence could not support the existence of an immediate medical emergency, as it was enough that the officer *believed* that one existed.<sup>99</sup>

The state took the case to the Michigan Supreme Court. In the end, though the Michigan Supreme Court reviewed the parties' briefs and heard oral arguments, it ultimately decided to vacate its prior order that granted the state's application for leave to appeal, thus denying the application altogether.<sup>100</sup> Two justices dissented. One of them simply stated that it would have reversed the appellate court's judgment, citing the dissenting opinion.<sup>101</sup> The other took it a step further, examining the underlying facts and emphasizing that for the emergency aid exception to apply, the officers' subjective motivations were irrelevant.<sup>102</sup> The dissent highlighted that after *Brigham City*, the circumstances, viewed objectively, must have justified the officers' conduct while the officers' states of mind were irrelevant.<sup>103</sup> Based on the evidence before the trial court, the dissent explained:

Faced with an irrational and violent man, who was creating a disturbance and not responding to the police officers, and a blood trail leading from a truck to the house, Officer Goolsby could reasonably believe that someone inside, including defendant, needed medical assistance. Indeed, as [the prior dissent] observed, "it

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<sup>96</sup> *Fisher*, 2008 WL 786515, at \*2 (quoting the trial court record).

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at \*4 (Talbot, J., dissenting) ("Given defendant's bizarre behavior, it was reasonable for officers to surmise that he might need medical or psychiatric intervention to prevent from incurring injury . . . which [may have been] not readily observable . . .").

<sup>99</sup> *Id.*

<sup>100</sup> *People v. Fisher*, 765 N.W.2d 19, 19 (Mich. 2009).

<sup>101</sup> *Id.* (Weaver, J., dissenting).

<sup>102</sup> *Id.* at 21 (Young, J., dissenting).

<sup>103</sup> *Id.* at 21 n.11.

was reasonable for officers to surmise that [defendant] might need medical or psychiatric intervention to prevent him from incurring injury.”<sup>104</sup>

The dissent, in the end, determined that although the drops of blood on the scene may have indicated only a minor injury, the law after *Brigham City* does not require an officer to view or confirm a severe injury before conducting a search pursuant to the emergency aid exception.<sup>105</sup> Indeed, so long as the officers maintained a reasonable belief that the defendant or someone inside the home required medical assistance, the officers’ entry would be justified under the exception.<sup>106</sup> Accordingly, the dissent suggested a reversal and remand for further proceedings.<sup>107</sup> Seizing the opportunity, the state appealed the judgment to the United States Supreme Court.

### C. United States Supreme Court Review

In a *per curiam* decision, the Supreme Court recounted the facts in *Fisher* and worked under the following premise: “[a] straightforward application of the emergency aid exception, as in *Brigham City*, dictates that the officer’s entry was reasonable.”<sup>108</sup> To that end, the Court walked through what it perceived to be several similarities between the facts in *Fisher*’s case and those in *Brigham City*.<sup>109</sup> It noted that in both cases police officers were responding to a report of some sort of disturbance and when the officers arrived on the scene “they encountered a tumultuous situation in the house.”<sup>110</sup> The Court’s description of that “tumultuous situation,” however, requires a close examination.

When describing the scene in *Fisher*, the Supreme Court made much of the fact that the officers could see *Fisher* inside the home screaming

<sup>104</sup> *Id.* at 21 (second alteration in original) (quoting *Fisher*, 2008 WL 786515, at \*4 (Talbot, J., dissenting)).

<sup>105</sup> *Id.* at 22.

<sup>106</sup> *Id.*; see also *Tierney v. Davidson*, 133 F.3d 189, 196 (2d Cir. 1998) (“Courts must apply an objective standard to determine the reasonableness of the officer’s belief.”). *Tierney* had somewhat of a limited scope, as the court considered the necessity for officers to intervene in domestic disputes. The court went on to say, “[c]ourts have recognized the combustible nature of domestic disputes, and have accorded great latitude to an officer’s belief that warrantless entry was justified by exigent circumstances when the officer had substantial reason to believe that one of the parties to the dispute was in danger.” *Tierney*, 133 F.3d at 197.

<sup>107</sup> *Fisher*, 765 N.W.2d at 22 (Young, J., dissenting).

<sup>108</sup> *Michigan v. Fisher*, 130 S. Ct. 546, 548 (2009).

<sup>109</sup> *Id.* at 548–49.

<sup>110</sup> *Id.* at 548.

and throwing things.<sup>111</sup> And though the Court found this similar to the conduct displayed in *Brigham City*, the Court ignored an obvious difference—the officers in *Fisher* confirmed that they did not see anyone aside from Fisher inside the home, whereas the officers in *Brigham City* witnessed firsthand one individual strike another individual, who then spat blood in the sink. Ignoring this distinction, the Court determined that it was objectively reasonable for the officers to *assume*, merely because they saw Fisher throwing things, that whatever it was that Fisher was throwing “might have a human target.”<sup>112</sup> As such, the Court confirmed that police officers need not have “ironclad proof of” an injury to invoke the emergency aid exception; they simply must have an objectively reasonable basis for *believing* that someone is injured and requires assistance.<sup>113</sup>

Subsequently, the Court explained that the Michigan Court of Appeals erred when it replaced the objective inquiry “with its hindsight determination that there was in fact no emergency.”<sup>114</sup> The state court, in essence, required more than the Fourth Amendment demands. Given the needs of law enforcement, and keeping in mind the demands of public safety, the Supreme Court stressed that *Fisher* did not involve the type of situation from which officers would be required and expected to walk away.<sup>115</sup> In the end, it was objectively reasonable that they did not.

#### IV. THE EFFECT OF OVERRULING STATE COURTS THAT INTERPRET THE FOURTH AMENDMENT TOO BROADLY

*Michigan v. Fisher* included one brief dissent. In it, Justice Stevens, joined by the newly appointed Justice Sotomayor, made clear that he was not at all pleased with the majority’s decision to review the case, noting “it is hard to see how the Court is justified in micromanaging the day-to-day business of state tribunals making fact-intensive decisions of this

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<sup>111</sup> *Id.* at 549.

<sup>112</sup> *Id.* The “projectiles” may have been aimed at a spouse or a child, which is rather speculative because, again, there is nothing in the record to suggest that anyone other than Fisher was inside the home. *Id.*

<sup>113</sup> *Id.* (clarifying that “the test, as we have said, is not what [the officer] believed, but whether there was ‘an objectively reasonable basis for believing’ that medical assistance was needed, or persons were in danger”) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 406 (2006); *Mincey v. Arizona*, 437 U.S. 385, 392 (1978)). We can liken this reasonableness determination to the arbitrary and capricious standard, which requires an administrative body to simply have the ability to justify its decision with the facts in the record. If the facts support its decision, then the district court must affirm.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

kind.”<sup>116</sup> He went on, saying that the Supreme Court “ought not usurp the role of the factfinder when faced with a close question of the reasonableness of an officer’s actions, particularly in a case tried in a state court.”<sup>117</sup> Stevens obviously took issue with the Supreme Court’s role in the case. Indeed, he expressed similar frustrations in the past, most notably in *Brigham City v. Stuart*, which we examined above. On several occasions, in fact, Stevens has articulated the same sentiment he expressed in *Fisher*—that the Supreme Court was unnecessarily having the last word in cases where state courts protected their citizens’ Fourth Amendment rights too much.<sup>118</sup> This practice, says Stevens, departs from tradition and compromises the Supreme Court’s conventionally deferential relationship with the states’ trial and appellate courts.<sup>119</sup>

#### A. *An Effective Contribution*

In *Stuart*, Stevens stressed that a policy of judicial restraint enables the Supreme Court “to make its most effective contribution to our federal system of government.”<sup>120</sup> He borrowed this language from his thoughtful dissent in *Michigan v. Long*, a case decided almost two decades before, in which he saw the opportunity to discuss and outline the relationship between the federal government and the sovereign states, specifically the State of Michigan.<sup>121</sup> What is more, Stevens raises an interesting question regarding the allocation of the Supreme Court’s resources. In the past, he notes, the Court would not bother with cases in

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<sup>116</sup> *Id.* at 550–51 (Stevens, J., dissenting). Stevens hinted that he remained unconvinced that the state court had gotten it wrong in the first place, and characterized the Supreme Court’s conclusion as an “assumption” based on a close question of fact. *Id.*

<sup>117</sup> *Id.* at 551.

<sup>118</sup> *Brigham City v. Stuart*, 547 U.S. 398, 409 (2006); see also Bonventre, *supra* note 3, at 846–47 (noting that the Supreme Court is not reviewing cases in which the states’ highest courts have failed to protect their citizens’ rights and liberties, but cases “where the Court finds fault with the state courts for protecting rights and liberties too much”).

<sup>119</sup> *Michigan v. Long*, 463 U.S. 1032, 1067 (1983) (Stevens, J., dissenting) (“The nature of the case before us hardly compels a departure from tradition.”); see also Melanie D. Wilson, *The Return of Reasonableness: Saving the Fourth Amendment from the Supreme Court*, 59 CASE W. RES. L. REV. 1, 32 (2008) (“Given the clear and well-established rule of deference to factfinders’ determinations, when the Court assesses or re-assesses facts on its way to deciding whether a search or seizure was reasonable, the Court’s decisions appear result-oriented.”).

<sup>120</sup> *Stuart*, 547 U.S. at 409 (Stevens, J., concurring) (“Indeed, I continue to believe ‘that a policy of judicial restraint—one that allows other decisional bodies to have the last word in legal interpretation until it is truly necessary for this Court to intervene—enables this Court to make its most effective contribution to our federal system of government.’”) (quoting *Long*, 463 U.S. at 1067 (Stevens, J., dissenting)).

<sup>121</sup> *Long*, 463 U.S. at 1065 (Stevens, J., dissenting) (“The case raises profoundly significant questions concerning the relationship between two sovereigns—the State of Michigan and the United States of America.”).

which the state courts provided greater protections to their own citizens.<sup>122</sup> And when the Supreme Court started to hear these cases, Stevens tells us that litigants on behalf of the states flooded the Court's docket and requested, at an alarming rate, that the Court reverse state court judgments in favor of their citizens.<sup>123</sup>

The issue here, however, is not economic. Stevens is not asserting that the Supreme Court is wasting its resources in reviewing these cases. What is happening is that the Supreme Court is overruling cases that would have had the same outcome if the challenge was brought pursuant to state law. In other words, in a case involving the emergency aid exception, if the defendant moved to quash the evidence as a violation of state law, as opposed to the Fourth Amendment, then the state court would be free to operate outside the confines of federal law.<sup>124</sup> In this way, the state court can consider the officer's motives and intent while providing greater protections to its citizens and thus shielding them from what the Supreme Court has defined as "reasonable."<sup>125</sup> The Supreme Court, in the end, would have no reason to review such a case; thus, a question remains as to why the Supreme Court would see fit to do so when a Fourth Amendment question is not at stake.<sup>126</sup>

Moreover, Stevens reminds us that the traditional role of the Supreme Court in reviewing state court decisions is to ensure that the state is providing sufficient rights to its citizens.<sup>127</sup> In the same vein, scholars have described the Supreme Court as a "guardian," functioning as a safeguard of citizens' fundamental rights and liberties.<sup>128</sup> The Court,

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<sup>122</sup> *Id.* at 1069. Here Stevens recounts that in 1953 the Supreme Court heard only one case in which the Court reviewed a state court's ruling in favor of its citizen. *Id.* In 1968, the Court did not review any. *Id.* Nevertheless, he says, at some point during the late 1970s the Court's "priorities shifted." *Id.* at 1069-70.

<sup>123</sup> *Id.* at 1070 ("The result is a docket swollen with requests by States to reverse judgments that their courts have rendered in favor of their citizens.").

<sup>124</sup> See *Brigham City v. Stuart*, 122 P.3d 506, 510 (Utah 2005).

<sup>125</sup> See Wilson, *supra* note 119, at 36 (criticizing generally the Supreme Court's assessment of what is reasonable, arguing that "the Court's case outcomes in cases involving mixed issues of reasonableness are inconsistent, seemingly result-oriented, and they often defy common-sense notions of how reasonable citizens respond to police demands") (footnote omitted).

<sup>126</sup> See generally Laura S. Fitzgerald, *Suspecting the States: Supreme Court Review of State-Court State-Law Judgments*, 101 MICH. L. REV. 80, 82 (2002) ("Indeed, the Court has long recognized that where a state-court judgment rests on an 'adequate and independent' state-law ground . . . the Supreme Court lacks jurisdiction to review even a *federal* question the state court decided too, no matter how wrong the state court got it.").

<sup>127</sup> See *Long*, 463 U.S. at 1068 (Stevens, J., dissenting) ("I believe that in reviewing the decisions of state courts, the primary role of this Court is to make sure that persons who seek to vindicate federal rights have been fairly heard.").

<sup>128</sup> Bonventre, *supra* note 3, at 844.

in essence, concerned itself with the enforcement of federal constitutional guarantees, while it did not trouble itself with the correction of state court decisions that went above and beyond protecting those same guarantees the first time around. One scholar summarized the problem as follows:

The Court is declaring emphatically and unambiguously to state courts: You have no authority to provide more protection for American Constitutional rights than the bare minimum. Protect local rights under local law all you want, the Court is saying, but not those rights and liberties and freedoms to which the nation as a whole is dedicated.<sup>129</sup>

Such a declaration is unfounded in light of the Court's traditional role. It is indeed critical that the Court wrangle less with cases in which citizens' rights are "overprotected" and focus more on cases in which those rights have been abridged. Recognizing that the Court serves as our guardian of rights and liberties, Stevens's concerns become rather compelling. But there is indeed another concern.

*B. The Problem With Reassessing Facts*

Fourth Amendment cases, including those that involve the emergency aid exception, often turn on a close examination of the facts adduced at the evidentiary hearing.<sup>130</sup> The trial court is present to hear the witnesses and evaluate their demeanor first hand.<sup>131</sup> It is difficult, then, to truly and properly judge a witness's credibility based on a lifeless record,<sup>132</sup> unless of course the record reflects that the witness at

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<sup>129</sup> *Id.* at 852.

<sup>130</sup> See, e.g., *Hopkins v. Bonvicino*, 573 F.3d 752, 764-65 (9th Cir. 2009) (turning to the alleged facts and finding that the emergency aid exception did not apply because officers had no reasonable basis to believe that the defendant needed immediate medical attention); *United States v. Venters*, 539 F.3d 801, 807-08 (7th Cir. 2008) (examining the trial record and concluding that warrantless entry was valid where officers had knowledge of a child inside the premises, which they knew was a dangerous environment used in meth manufacturing, it was extremely filthy, the defendant was addicted to drugs, and they were responding to a report of neglect); *United States v. Troop*, 514 F.3d 405, 410-11 (5th Cir. 2008) (finding that warrantless entry was unjustified where officers did not observe blood, physical illness, or any outward signs that someone was carried or dragged).

<sup>131</sup> *Wilson*, *supra* note 119, at 36.

<sup>132</sup> *Id.* at 36-37 ("Credibility cannot be determined on a cold, written record."); see also *Miller v. Fenton*, 474 U.S. 104, 114 (1985) ("When, for example, the issue involves the credibility of witnesses and therefore turns largely on an evaluation of demeanor, there are

some point gave inconsistent testimony. In this light, appellate courts will often defer to the factual findings of the trial court, which in turn protects the appellate courts' time and resources.<sup>133</sup>

More importantly, however, despite the resources that the appellate court may or may not save, the deference that it gives to the trial courts cannot be underestimated. In those instances in which the Supreme Court reviews the facts of a particular case—often for the fourth time on appeal—it runs the risk of usurping the role of the trial court and injecting itself into a factual squabble with which it generally has no interest. And because the Court is not present to see, hear, and consider the factual presentation first-hand, the Court's evidentiary conclusions and self-serving characterizations, for the most part, will seem "result-oriented."<sup>134</sup> This is not to say that the Supreme Court should avoid reviewing the facts of a particular case. Instead, it should avoid re-characterizing and molding the facts in a way that conflicts with the lower courts' interpretation in an attempt to support the conclusion it seeks to achieve. When the Court substitutes its judgment for what happened in a case involving the emergency aid exception, or any Fourth Amendment determination, the ultimate disposition tends to lose credibility.<sup>135</sup>

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compelling and familiar justifications for leaving the process of applying law to fact to the trial court and according its determinations presumptive weight.").

<sup>133</sup> See Chad M. Oldfather, *Appellate Courts, Historical Facts, and the Civil-Criminal Distinction*, 57 VAND. L. REV. 437, 483 (2004) ("A second justification for appellate deference to lower court findings of fact has to do with the economical use of judicial resources."); see also Amanda Peters, *The Meaning, Measure, and Misuse of Standards of Review*, 13 LEWIS & CLARK L. REV. 233, 239-40 (2009) (explaining that the appellate court is most concerned with ascertaining whether the trial court correctly applied the law, not with determining the underlying facts, as that would "result in a poor use of judicial resources").

<sup>134</sup> Wilson, *supra* note 119, at 28.

<sup>135</sup> *Id.* at 39 (asserting that when the Court goes beyond its role of establishing clear rules defining what it means to be reasonable under a particular set of circumstances and instead second-guesses conclusions of fact finders and evaluating citizens' beliefs, "the Court reaches problematic results"). Wilson points out that the fact finders also benefit from understanding the local customs in the region in which they sit, and that appellate courts, which are removed from that region, "cannot replicate these experiences and are, therefore, at a disadvantage to decide factual issues accurately and fairly." *Id.* at 37. I personally question the importance of local custom, though Wilson makes a fair point. Kenneth Brown critiques appellate courts by stating as follows:

Most trial judges will not substitute their judgment for that of the jury's because of respect for and deference to the integrity of the fact finding process. Yet, appellate courts in the name of harmless error have no hesitation in trampling that fact finding process to reach a result they consider correct, regardless of the right affected.

Kenneth R. Brown, *Constitutional Harmless Error or Appellate Arrogance*, 6 UTAH B.J. 18, 20 (Jan. 1993).



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Moreover, the practice of deferring to the lower courts' factual findings and reasonableness determinations in Fourth Amendment cases preserves the integrity of the state trial and appellate courts.<sup>136</sup> There is no need for the Supreme Court to reverse the state courts when they do no harm to their state citizens.<sup>137</sup> Such cases generally involve only state actors. And, again, there is no violation of those state actors' federal constitutional rights. Rather, these cases involve a constitutional right that the state courts have either protected or redressed, and it is that protection that the state asks the Supreme Court to limit.<sup>138</sup> Proper deference to the facts that the lower courts have considered and developed not only creates a more efficient judicial system, but it also allows the Supreme Court to return to its traditional function, as the lower courts enjoy their traditional function. There simply is no need to disrupt this relationship.

## V. CONCLUSION

In *Michigan v. Fisher*, the United State Supreme Court reversed the state courts' findings that the emergency aid exception did not justify a group of officers' warrantless entry into the defendant's home. In doing so, the Court neither pronounced new law regarding the Fourth Amendment nor did it enforce any federal constitutional guarantees. To be sure, there were not any rights or liberties at stake. Instead, the Court simply disagreed with the state courts' determinations that their own citizens should be afforded greater protections than federal law required. Justice Stevens has taken issue with similar decisions in the past and has made clear that the Supreme Court operates in an inefficient manner when it departs from its traditional role. The Court generally had no interest in these types of cases but nevertheless began injecting itself into factual determinations and disagreeing with the conclusions of the state

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<sup>136</sup> Mark A. Bross, Comment, *The Impact of Ornelas v. United States on the Appellate Standard of Review for Seizure Under the Fourth Amendment*, 9 U. PA. J. CONST. L. 871, 877 (2007) ("Deference to the trial court's findings of fact . . . minimizes the risk of judicial error by assigning decision-making responsibility to the court that is best-suited to make the decision.").

<sup>137</sup> Perhaps a more prudent order of the Supreme Court would be to vacate the lower court's decision with instructions as to the proper standard it need apply on remand. See Sena Ku, Comment, *The Supreme Court's GVR Power: Drawing A Line Between Deference and Control*, 102 NW. U. L. REV. 383, 409 (2008) (explaining that vacating and remanding can be viewed as a training instrument to make state courts "more accountable, efficient, and 'accurate' in deciding points of law") (quoting *Lawrence v. Chater*, 516 U.S. 163, 168 (1996)). This preserves the trial court's integrity somewhat, though there is still no need to vacate a decision when a state court simply protects its citizens too much; thus, our concerns here still would exist.

<sup>138</sup> Bonventre, *supra* note 3, at 851-52.

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courts. If we view the Supreme Court as a guardian of rights and liberties, this practice simply does not make sense. This practice is one that the Supreme Court can easily curb, and ought to curb, so that it can once again ensure, without distraction, that our constitutional rights are adequately protected.