



EXIGENT CIRCUMSTANCES AS AN EXCEPTION TO THE WARRANT REQUIREMENT FOR SEARCHES OF RESIDENCES

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On November 8, 2016, the D.C. Circuit Court of Appeals of decided *Corrigan v. District of Columbia*, in which the court examined whether exigent circumstances justified two separate warrantless entries into the residence of a man that called a suicide hotline. The relevant facts of *Corrigan*, taken directly from the case, are as follows:

Matthew Corrigan is an Army Reservist and an Iraq war veteran who, in February 2010, was also an employee of the U.S. Department of Labor's Bureau of Labor Statistics. On the night of February 2, 2010, suffering from sleep deprivation, he inadvertently phoned the National Suicide Hotline when dialing a number he thought to be a Veterans Crisis Line. When he told the Hotline volunteer that he was a veteran diagnosed with PTSD, she asked whether he had been drinking or using drugs and whether he owned guns. Corrigan assured her that he was only using his prescribed medication and was not under the influence of any illicit drugs or alcohol; he admitted that he owned guns. The volunteer told him to "put [the guns] down," and Corrigan responded, "That's crazy, I don't have them out." Corrigan Dep. 56:2-5. Despite Corrigan's assurances that his guns were safely stored, the volunteer repeatedly asked him to tell her "the guns are down." *Id.* 56:2-14. When asked if he intended to hurt himself or if he intended to "harm others," he responded "no" to both questions. *Id.* 69:6-18. Frustrated, Corrigan eventually hung up and turned off his phone, took his prescribed medication, and went to sleep. *Id.* 56:10-14; 70:6-7. The Hotline volunteer proceeded to notify the MPD.

At approximately 11:13 p.m., according to the February 9, 2010, Barricade Report from Lieutenant Glover to the MPD Chief of Police, officers from the MPD Fifth District were dispatched to Corrigan's home for "Attempted Suicide." Barricade Rpt. 1. Certain undisclosed "information" led them "to believe the subject was possibly armed with a shotgun." *Id.* Corrigan lived at 2408 North Capitol Street, in Northwest D.C., in the basement apartment of a row house that had its own front and back doors. Upon arrival, the officers thought they detected a "strong odor" of natural gas and contacted the gas

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company, which turned off the gas to the row house. *Id.*; D.C. Super. Ct. Tr. 113-14. The officers contacted Lieutenant Glover at home and he, in turn, gave orders to declare a "barricade situation," which meant that the ERT also went to Corrigan's home. The MPD Command Information Center advised that Corrigan, a white male, age 32, had no known criminal record and there were no outstanding protective orders against him. An ERT investigator learned that Corrigan was a U.S. Army combat veteran who had served recently during the Iraq war and owned a rifle and several handguns. Additionally, he had recently terminated a romantic relationship and was under psychiatric care for PTSD and depression. He also had a dog.

At 2:00 a.m., the ERT assumed tactical control of the situation. At 2:10 a.m., the MPD began to secure the perimeter around Corrigan's home, including evacuating his neighbors. Barricade Rpt. 2; see D.C. Super. Ct. Tr. 113-14. At 2:30 a.m., Lieutenant Glover arrived on the scene and called on the EOD to respond. According to Lieutenant Glover's testimony, Corrigan's upstairs neighbor, who was his landlady, had told MPD officers that Corrigan occasionally had overnight guests, including an ex-girlfriend. See Glover Dep. 16:20-22; 33:1-5. An officer had reached the ex-girlfriend by cell phone, and she said Corrigan was a veteran taking prescribed medication for PTSD, had expertise in IEDs, and trained others in detecting and mitigating IED incidents. *Id.* 35:11-37:6. She also recalled seeing a green duffel bag containing "military items" in Corrigan's home that she had been told "not to touch" because "they were his guns and military stuff." *Id.* 36:17-21.

Around 3:00 a.m., MPD negotiators attempted to speak with Corrigan by dialing his cell phone number, calling his name over a public address system, and knocking or kicking his front door. The MPD had no indication, however, that Corrigan's failure to answer the door was suspicious. The officers had been told by his landlady and ex-girlfriend that Corrigan was likely sleeping, having taken his prescribed medication; his voicemail message stated "Hi, you've reached Matt, if I'm unavailable, I'm probably asleep." Indeed, his landlady, upon being advised that the reason for the police presence was Corrigan's attempted suicide, had insisted that was "outrageous" and repeatedly told the MPD officers that there was "a big misunderstanding" because she had known Corrigan for two years and had "never felt more comfortable with a neighbor in [her] life." D.C. Super. Ct. Tr. 106, 110. She had explained to the officers that Corrigan had guns because he was in the military and that his home had electric, not gas, appliances.

Corrigan testified that around 4:00 a.m. he became aware of someone kicking at his front door, and then his back door, and was "terrified," feeling he was being "hunted." Corrigan Dep. 70:11-21. He moved from his bedroom to the bathroom where he felt safest and tried to go back to sleep. *Id.* 70:21-71:3. When he turned on his cell phone at 4:16 a.m., see Barricade Rpt. 4, he received a flood of voicemails. He returned the call of the detective who was one of the MPD negotiators. Corrigan initially said he was at another address, because he was scared, but within minutes admitted he was at home. Having noticed the flood light and all the police officers at the front and back of his home, he told the negotiator he was coming outside but needed to put on clothes because of the fallen snow. He described the clothes he would be wearing and that his cell phone would be in

his left hand when he came out so the police would not shoot him because they thought he had a gun. Corrigan Dep. 76:12, 21-22.

Exiting his home within 20 minutes of first speaking to the negotiator, Corrigan closed and locked his front door so his dog would not get out and no one could enter his home. Corrigan Dep. 96:18-19; *see also id.* 77:6-17. In order to appear as non-threatening as possible, he knelt on the ground and lay on his back. MPD officers immediately secured his hands with a white "zip-tie," searched his person (on which he had only a military identification card and his cell phone), and took him to a police vehicle where he was told he had not committed any crime and the officers only wanted to talk to him. *See id.* 97-98. Eventually, he was taken to a Veterans Hospital where he voluntarily admitted himself for PTSD symptoms triggered by the night's events. First Am. Compl. ¶ 19.

When Corrigan was questioned prior to being removed from the scene by the MPD, he refused to give his house key to an MPD officer or to consent to the MPD entering his home. The officer who had asked for his key told him: "I don't have time to play this constitutional bullshit. We're going to break down your door. You're going to have to pay for a new door." Corrigan Dep. 94:15-18. Corrigan responded, "It looks like I'm paying for a new door, then. I'm not giving you consent to go into my place." *Id.* 94:19-21.

After Corrigan was in MPD custody, Lieutenant Glover ordered the ERT, led by Sergeant Pope, to break in Corrigan's home to search for "any human threats that remained or victims." Glover Dep. 10:15-17. Glover testified that he thought the "sweep" of Corrigan's home was necessary because the officer who spoke to Corrigan's ex-girlfriend had not reported whether he asked her whereabouts or visually confirmed her location; Corrigan's ex-girlfriend or other persons had stayed overnight in his home, so other persons could have been present; a gas leak had been reported and Corrigan had initially "dece[ived]" the police about his location and had told the Hotline volunteer that he did not intend to harm "others," potentially implying that someone else might be inside. *Id.* 13-14, 40. As a matter of course, Glover explained, if an ERT unit is called to a scene it goes inside 99.9% of the time, *see id.* 18:12-14, because "[s]tandard protocol" assumes "if there's one [person inside] there's two, if there's two there's three, if there's three there's four, and exponentially on up," *id.* 13:18-21.

Upon breaking in Corrigan's home, the ERT encountered only Corrigan's dog; no one was found inside and no dangerous or illegal items were in plain view. Nonetheless, Lieutenant Glover thereafter ordered the EOD, led by Officer Leone, to break in Corrigan's home again to search for "any hazardous materials that could remain on the scene and be dangerous to the public or anybody else in that block or area." *Id.* 10:17-22. In Glover's view, a thorough top-to-bottom warrantless search was necessary because the EOD had not cleared Corrigan's home of any hazardous materials or devices. Glover said he believed such hazards "to be possibly inside" based on Corrigan's ex-girlfriend's reference to a duffel bag containing unspecified "military items." *Id.* 57:16-17. During the second MPD search, EOD officers cut open every zipped bag, dumped onto the floor the contents of every box and drawer, broke into locked boxes under the bed and in the closet, emptied shelves into piles in each room, and broke into locked boxes containing Corrigan's three firearms. *See Pl.'s Answers to Interrogs.*, ¶ 8; First Am. Compl. ¶ 22.

Inside the locked boxes, the EOD found, and seized, an assault rifle, two handguns, a military smoke grenade, a military "whistler" device, fireworks, and ammunition.

Corrigan was charged that day, February 3, 2010, with three counts of possession of an unregistered firearm and seven counts of unlawful possession of ammunition. Later, when he was released from the Veterans Hospital into police custody he was arraigned in the D.C. Superior Court, after spending three days in the central cell block. He was held at D.C. jail until he was released on his own recognizance on February 19. Upon returning home, Corrigan found his home in complete disarray: the police had left the contents of his bureau drawers and shelves scattered on the floor, his electric stove had been left on, and the front door of his home was left unlocked. First Am. Compl. ¶ 22; Pl.'s Answers to Interrogs., ¶ 8. On April 19, 2012, the D.C. Superior Court judge granted Corrigan's motion to suppress the seized firearms and ammunition, finding that the government could not show facts justifying the warrantless entry and search of his home. *Dist. of Columbia v. Corrigan*, No. 2010 DCD 2483, Super. Ct. Tr. 10 (Apr. 19, 2012). The District government *nolle prossed* all the charges.ⁱⁱ

Corrigan filed suit and argued that the officers violated his rights under the Fourth Amendment by entering his home twice without a warrant, searching it and seizing his weapons. The district court granted summary judgment for all defendant officers and Corrigan appealed to the D.C. Court of Appeals.

On appeal, Corrigan argued that both the entry by the ERT and the subsequent entry and search by EOD violated the Fourth Amendment and that the law was clearly established that entry and search were unlawful where there was no indication that anyone else was home and no threat of imminent danger to the officers or others.

The D.C. Circuit first described the constitutional law pertinent to this case as follows:

[T]he 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'" *Welsh v. Wisconsin*, 466 U.S. 740, 748 (1984) (quoting *United States v. U.S. Dist. Court*, 407 U.S. 297, 313 (1972)). Warrantless searches and seizures inside a home are "presumptively unreasonable," *Payton v. New York*, 445 U.S. 573, 586 (1980), "subject only to a few specifically established and well-delineated exceptions," *Katz v. United States*, 389 U.S. 347, 357 (1967). **Unless there is evidence to show "exigent circumstances" or another exception sufficient to justify a warrantless entry, the MPD searches violated Corrigan's Fourth Amendment right.** See *Coolidge v. New Hampshire*, 403 U.S. 443, 477-78 (1971). "[T]he police bear a heavy burden when attempting to demonstrate an urgent need that might justify [a] warrantless search[]" *Welsh*, 466 U.S. at 749-50.ⁱⁱⁱ

Further, regarding the "exigent circumstance" exception to the warrant requirement, the court stated

Exigency can justify a warrantless search "when there is *compelling need* for official action and *no time* to secure a warrant." *Michigan v. Tyler*, 436 U.S. 499, 509 (1978) (emphases added). **Without providing an exclusive list, the Supreme Court has recognized several exigent circumstances that could justify a warrantless**

entry and search, such as the hot pursuit of a fleeing suspect, *United States v. Santana*, 427 U.S. 38, 42-43 (1976); the need to prevent the imminent destruction of evidence, *Kentucky v. King*, 563 U.S. 452, 460-61 (2011); and situations, as the MPD claimed here, where there is a "need to protect or preserve life or avoid serious injury," *Brigham City*, 547 U.S. at 403 (internal quotation marks omitted). Whether exigent circumstances exist to justify a warrantless search "is judged according to the totality of the circumstances" and on "what a reasonable, experienced police officer would believe." *In re Sealed Case*, 153 F.3d 759, 766 (D.C. Cir. 1998) (internal quotation marks omitted).

When relying on an exigent circumstances exception to the warrant requirement, the officers must have "at least probable cause to believe that one or more of the . . . factors justifying entry were present." *Minnesota v. Olson*, 495 U.S. 91, 100 (1990). As this court explained in *United States v. Dawkins*, 17 F.3d 399, 403 (D.C. Cir. 1994), "an exception to the warrant preference rule . . . does not alter the underlying level of cause necessary to support entry." The police must, the Supreme Court has repeatedly emphasized, have "an objectively reasonable basis for believing" that the urgent and compelling need that would justify a warrantless entry actually exists. *Brigham City*, 547 U.S. at 406; *Michigan v. Fisher*, 558 U.S. 45, 47 (2009); *Mincey v. Arizona*, 437 U.S. 385, 392 (1978); *In re Sealed Case*, 153 F.3d at 766; *United States v. Mason*, 966 F.2d 1488, 1492 (D.C. Cir. 1992); *United States v. Timberlake*, 896 F.2d 592, 597-98 (D.C. Cir. 1990). Additionally, a search pursuant to the exigent circumstances exception must be "no broader than necessary," *Mason*, 966 F.2d at 1492, and "strictly circumscribed by the exigencies which justify its initiation," *Mincey*, 437 U.S. at 393 (internal quotation marks omitted). [emphasis added]

The court then set out to apply the facts of Corrigan's case to the rules above. At the start, the court assumed for the sake of argument, that the first search by the ERT could be supported by exigent circumstances to look for Corrigan's ex-girlfriend. They then moved on to analyze the second search, which was conducted by the EOD unit.

The court held that this second warrantless entry and search by the EOD unit violated the Fourth Amendment and they set out several reasons for that holding. First, the court stated no reasonable basis to conclude that hazardous devices or materials were in Corrigan's residence. There was only information that Corrigan had "guns" and some "military stuff" in a green duffel bag. There was no information that he had IED's or IED making materials.

Second, the officers knew from the initial quick sweep by ERT, that no other person's, such as the ex-girlfriend were in the residence. Further, Corrigan had been arrested and removed from the scene so he was no longer a threat.

Third, the officers spoke to Corrigan's landlady, who told the police that she had never known him to threaten anyone or his own life or ever be abusive.

Fourth, the court noted that the officer's own delay prior to the second entry by EOD shows there was truly no exigent circumstances. The court stated that a warrantless entry based on exigent

circumstances must be based on a genuine exigency. The court noted that the officers had ample opportunity before the second entry to obtain a warrant.

Fifth, the officers could not use the smell of gas as justification because gas had been shut off several hours prior to the entry.

Sixth, the scope and manner of the search was unreasonably broad, in that the officers broke into locked containers and dump numerous items on the ground. The court stated

[T]he scope of the "exhaustive and intrusive" search was unreasonably broad, with EOD officers rifling through every concealed space in Corrigan's home and breaking open closed containers. See *Mincey*, 437 U.S. at 389. Such a top-to-bottom search falls far outside the bounds of reasonableness given what the officers knew at the time and the Supreme Court's clear admonition that warrantless searches pursuant to an exigent circumstances exception be "strictly circumscribed by the exigencies which justify its initiation." *Id.* at 393 (quoting *Terry v. Ohio*, 392 U.S. 1, 25-26 (1968)); *Florida v. Royer*, 460 U.S. 491, 500 (1983); *Cupp v. Murphy*, 412 U.S. 291, 295 (1973). Even "[u]rgent government interests are not a license for indiscriminate police behavior." *Maryland v. King*, 133 S. Ct. 1958, 1970 (2013). To hold otherwise would condone the officers' implicit and patently unreasonable view that whenever MPD officers break in a veteran's home in response to a possibility that an occupant may be a danger, they may also re-enter to search the *entire* premises by breaking into locked containers for potential but unidentified military items. No precedent, even in the context of potentially explosive devices, supports the officers tearing open containers and prying open locked boxes when conducting a warrantless search based on conjecture that hazardous substances might be present.^{iv}

Seventh, the court examined whether the community care-taking function, which initially applied to the warrantless search of an automobile could apply here. The court stated

And even assuming, without deciding, that the community caretaking doctrine could justify the warrantless search of a home, it cannot shield the officers from liability. It is clearly established that this doctrine encompasses only police searches that are occasioned by, and strictly circumscribed by, the need to perform caretaking functions "totally divorced from the detection, investigation, or acquisition of evidence related to" a crime. *Cady*, 413 U.S. at 441. That is, the police must be lawfully inside a home for a reason unrelated to ferreting out crime.^v

The court noted that the second search by EOD could be the type of minor search contemplated by community care taking function – rather the search of Corrigan's residence was exhaustive, destructive and was used to seize evidence of a crime, albeit that the criminal charges were ultimately dismissed.

The court then granted qualified immunity to the ERT officers for the first search and denied qualified immunity for the EOD officers involved in the second search.

ⁱ No. 15-7098 (D.C. Cir. Decided November 8, 2016)

ii Id. at 3-8
iii Id. at 11
iv Id. at 16
iv Id. at 24

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