

# Help! I Need Somebody (or Do I?): A Discussion of Community Caretaking and “Assistance Seizures” Under Iowa Law

*John W. Sturgis VII\**

*ABSTRACT: Police officers often engage in activity that extends beyond their role as criminal investigators. Whether helping with a flat tire or providing directions, police officers serve as “community caretakers” by providing aid to individuals and the general public. Some police community caretaking activities, however, are more invasive than others and constitute searches or seizures under the Fourth Amendment. Predominantly, state courts evaluate the reasonableness of these activities under the community caretaking doctrine. The formulation and application of this doctrine is far from uniform. In *State v. Kurth*, the Iowa Supreme Court suggested its willingness to address the community caretaking doctrine under article I, section 8 of the Iowa Constitution, which is identical to the Fourth Amendment in content. This Note argues that the court should reevaluate its treatment of a specific type of community caretaking activity, the “assistance seizure,” which occurs when an officer stops a vehicle (therefore “seizing” it) for the purpose of providing aid. This Note proposes two modifications to Iowa’s existing jurisprudence for determining the reasonableness of assistance seizures. First, the court should adopt a requirement that an officer act with subjective good faith in providing aid, and that his actions be objectively reasonable. Second, it should adopt the view that seizures performed to help the subject of the seizure, as opposed to the general public, are presumptively unreasonable.*

---

\* J.D. Candidate, The University of Iowa College of Law, 2014; B.A., The University of Michigan, Ann Arbor, 2011. To my parents, friends, and Kelsey.

I. INTRODUCTION.....	1843
II. COMMUNITY CARETAKING: INCEPTION AND EVOLUTION .....	1848
A. <i>ENTER COMMUNITY CARETAKING: CADY V. DOMBROWSKI</i> .....	1848
B. <i>DEFINING REASONABLENESS IN THE CONTEXT OF COMMUNITY         CARETAKING: BALANCING TESTS AND EMERGENCY LIMITATIONS</i> .....	1849
1. <i>State v. Anderson: Balancing to Derive Reasonableness</i> .....	1850
2. <i>People v. Mitchell: Limiting Community Caretaking to             Emergency Situations</i> .....	1852
III. ANALYZING COMMUNITY CARETAKING: ASSISTANCE SEIZURES.....	1854
A. <i>SORTING COMMUNITY CARETAKING ACTIVITIES: IDENTIFYING         THIRD- AND FIRST-PARTY ASSISTANCE SEIZURES</i> .....	1854
B. <i>CURRENT IOWA LAW REGARDING COMMUNITY CARETAKING:         A FOCUS ON ASSISTANCE SEIZURES</i> .....	1856
1. <i>Kurth and Crawford: Adoption of the Anderson Test</i> .....	1857
2. <i>Special Concurrence: An Open Question Regarding             Assistance Seizures Under the Iowa Constitution</i> .....	1861
IV. CRITICISMS OF THE <i>MITCHELL</i> AND <i>ANDERSON</i> TESTS .....	1862
A. <i>EVALUATION OF THE MITCHELL TEST</i> .....	1863
B. <i>EVALUATION OF THE ANDERSON TEST</i> .....	1864
1. <i>Fourth Amendment Seizure</i> .....	1864
2. <i>Bona Fide Community Caretaker Activity</i> .....	1865
3. <i>Balancing Individual and Governmental Interests</i> .....	1868
a. <i>Evaluation of Provo City v. Warden</i> .....	1868
b. <i>Adherence to the First- and Third-Party Distinction</i> .....	1869
V. CONCLUSION .....	1873

## I. INTRODUCTION

*“My independence seems to vanish in the haze.”*

—The Beatles<sup>1</sup>

Butterbaugh—the devout follower of Bacchus, the local drunkard—is back to his old tricks. Consider the following:<sup>2</sup> In the wee hours of the morning, police received a call from a woman in a disconcerted state. The source of her anxiety, it seemed, was Butterbaugh. Somewhat frantically, she explained that Butterbaugh had taken some pills at her apartment and passed out. Now, several hours later, he had “come to” and was shouting and throwing his body about aggressively. Fleshy impacts and the occasional bellow could be heard in the background.

Butterbaugh found the phone conversation incomprehensible. In colloquial terms, he was “dazed and confused.” He did not know where he was, what he was doing, or whom he was doing it with. He wanted—no, he needed—a bastion of rationality. “A police officer should take me home,” Butterbaugh requested to anyone listening (he had forgotten about the woman on the phone). Instead, and against his better judgment, Butterbaugh left the apartment and got into a dark Ford pickup.

As one might expect, this was not the first time Butterbaugh caused such a ruckus. In fact, Officer Ellis had dealt with Butterbaugh more times than he could remember. A wry smile formed on his lips as he listened to the report from dispatch, remembering some of the more amusing incidents. As far as Ellis knew, Butterbaugh was not a troublemaker—he was simply a man keen on finding trouble.

En route to the caller’s apartment, Ellis noticed a vehicle matching the description of the one allegedly driven by Butterbaugh. The vehicle was complying with traffic laws and dispatch had not indicated to Ellis that Butterbaugh had committed a crime. Ellis swirled the police cruiser’s overhead lights and stopped the vehicle. As Ellis approached the driver’s side window, he scanned the occupants of the truck with his flashlight. Butterbaugh was riding shotgun. Officer Ellis did not know the driver, and the driver, Crawford, did not know the officer. Ellis explained that he received a call about Butterbaugh being in trouble and that he performed the stop to ensure everything was all right. “Sit tight while I radio dispatch,” Ellis said.

Crawford did not like this command. Perhaps he did not like police officers, or perhaps he wanted to explain himself. Whatever the case, Crawford exited the vehicle and approached Ellis. Crawford started speaking

---

1. THE BEATLES, *Help!*, on *HELP!* (EMI Studios 1965).

2. *State v. Crawford*, 659 N.W.2d 537, 539–40 (Iowa 2003), serves as the factual basis for this thought experiment, with which the author has taken dramatic liberties.

before Ellis could respond, and his words carried a pungent tang to Ellis's nostrils. Ellis's heightened olfactory organs, characteristic of on-duty police officers, immediately identified this particular bouquet: alcohol. Crawford was over the legal limit. His arrest and conviction for operating while intoxicated ensued.

The tale of Ellis, Crawford, and Butterbaugh, and those similar to it, serve as the focus of this Note. It responds, in general terms, to two questions that the anecdote left unanswered: (1) Was Officer Ellis justified in stopping Crawford's vehicle because he had reason to believe that Butterbaugh needed help? And (2) if his actions were justifiable, on what basis were they justified?

The Fourth Amendment to the United States Constitution is a logical threshold for answering such queries. Its hallowed phrasing provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause . . ." <sup>3</sup> Defined roughly, a search is an invasion by a government agent of an individual's "actual (subjective) expectation of privacy . . . that society is prepared to recognize as 'reasonable.'" <sup>4</sup> A seizure occurs when a government agent "by means of physical force or show of authority, has in some way restrained the liberty of a citizen."<sup>5</sup> The Fourth Amendment, therefore, insulates individuals from searches and seizures performed by government agents that are unreasonable in nature.

The subject of a search or seizure is the individual whose Fourth Amendment rights are implicated by the government action in question. In *Whren v. United States*, the Supreme Court established that a stop of a vehicle by a police officer constitutes a seizure of both the driver and the passengers.<sup>6</sup> In the above, then, both Crawford and Butterbaugh were subjects of Officer Ellis's seizure when he stopped their vehicle. Thus, Ellis's action clearly invoked the Fourth Amendment. However, the Constitution does not universally prohibit governmental searches and seizures. By its

---

3. U.S. CONST. amend. IV. Article I, section 8 of the Iowa Constitution is essentially identical to the Fourth Amendment. IOWA CONST. art. I, § 8.

4. *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring). For more information on *Katz* and Fourth Amendment searches, see 1 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 2.1 (5th ed. 2012).

5. *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968); see also LAFAVE, *supra* note 4, § 2.1(a) (detailing the general scope of Fourth Amendment "seizure" jurisprudence). Of course, "seizures" also constitute the taking of property by government officials. See LAFAVE, *supra* note 4, § 2.1(a) ("The act of physically taking and removing tangible personal property is generally a 'seizure.'" (quoting 68 AM. JUR. 2D *Searches and Seizures* § 8 (1973)) (internal quotation marks omitted)). The discussion of seizures in this Note will be limited to the seizure of persons.

6. *Whren v. United States*, 517 U.S. 806, 809–10 (1996) ("Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' . . .").

terms, “[t]he Fourth Amendment prohibits only unreasonable searches and seizures, not reasonable ones.”<sup>7</sup> Therefore, if Ellis’s seizure was “reasonable,” then he did not violate the Fourth Amendment rights of Butterbaugh or Crawford.

Reasonableness, in this setting, is generally determined by a balancing of interests.<sup>8</sup> On one side of the scale are individual interests—liberty (freedom from seizures)<sup>9</sup> and privacy (freedom from searches).<sup>10</sup> Governmental interests in the enforcement of criminal laws,<sup>11</sup> protection of the general public,<sup>12</sup> police officer safety from criminals,<sup>13</sup> and preservation of evidence,<sup>14</sup> weigh on the other side. If government activity is deemed to violate the Fourth Amendment, such that it constitutes an unreasonable search or seizure, then the evidence obtained by the government from the activity is excluded from criminal proceedings.<sup>15</sup>

Different tests, all of which evaluate interests in some fashion, are used to determine whether a particular search or seizure is reasonable. In many circumstances, the individual elements of these tests are described as either objective or subjective. An objective test requires the court or fact finder to consider the hypothetical “reasonable person” and evaluate how this person would react to a set of conditions to which the party in question was subjected.<sup>16</sup> The court does not consider the thoughts or beliefs that the party in question held at the time she was presented with the conditions.<sup>17</sup> In contrast, a subjective test requires the opposite—the fact finder must

7. 68 AM. JUR. 2D *Searches and Seizures* § 12 (2010).

8. *Whren*, 517 U.S. at 817 (“[E]very Fourth Amendment case, since it turns upon a ‘reasonableness’ determination, involves a balancing of all relevant factors.”).

9. *See Terry*, 392 U.S. at 19 n.16 (“[W]hen [an] officer . . . has in some way restrained the liberty of a citizen [the court may] conclude that a ‘seizure’ has occurred.”); *see also* LAFAVE, *supra* note 4, § 2.1 (a) (explaining that a deprivation of liberty constitutes a seizure of a person).

10. *See generally* *Katz v. United States*, 389 U.S. 347 (1967).

11. *See, e.g., Florida v. Bostick*, 501 U.S. 429 (1991) (rejecting a proposed per se rule for seizures because it would overly burden the enforcement of criminal laws).

12. *See, e.g., Terry*, 392 U.S. 1 (allowing a frisk of an individual to protect the officer and the public from dangerous weapons).

13. *See, e.g., Chimel v. California*, 395 U.S. 752 (1969) (allowing a search of an arrestee to preserve the government interest in officer safety).

14. *See, e.g., Welsh v. Wisconsin*, 466 U.S. 740, 753–54 (1984) (noting the governmental interest in preserving evidence).

15. *See Mapp v. Ohio*, 367 U.S. 643 (1961); *see also* WAYNE R. LAFAVE ET AL., *CRIMINAL PROCEDURE* § 9.4 (4th ed. 2004). The exclusionary rule in the context of Fourth Amendment follows the “Fruit of Poisonous Tree” doctrine. LAFAVE ET AL., *supra*, § 9.4. In general terms, this means that evidence that emerges from an unreasonable search or seizure in violation of the Fourth Amendment must be excluded from a criminal trial. *See id.*

16. *E.g., J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2402 (2011) (discussing the nature of objective tests and stating that such tests “avoid[] . . . [determining] subjective state of mind”).

17. *See id.* The classic example of an objective test is common law negligence, in which the fact finder is required to decide how a reasonable person, as opposed to the actual party, would have reacted to a set of conditions.

consider the actual state of mind of the party in question at the time she was subjected to the conditions.<sup>18</sup> Both are considered only from the viewpoint of the government agent, i.e., a subjective test requires consideration of the officer's state of mind, while an objective test inquires how a reasonable person in the officer's position would respond.

The most dominant standard for deriving Fourth Amendment reasonableness—"probable cause"—is a logical starting point for assessing Officer Ellis's seizure.<sup>19</sup> In the context of a seizure, probable cause requires an objective, substantial showing "that [(1)] a crime has been committed and [(2)] that the person to be arrested committed it."<sup>20</sup> The Supreme Court has long considered probable cause a "norm" of Fourth Amendment reasonableness,<sup>21</sup> meaning that its existence indicates that governmental interests in preventing and enforcing criminal activity outweigh individual interests in privacy and liberty.<sup>22</sup> Therefore, in the presence of probable cause, a police officer may perform a variety of seizures—such as arrests and stopping vehicles—without offending the Fourth Amendment.

Nonetheless, probable cause is not applicable to the situation at hand because there is no evidence of criminal activity.<sup>23</sup> Ellis did not stop the vehicle in order to arrest Crawford and, as far as Ellis knew, Butterbaugh

18. *Whren v. United States*, 517 U.S. 806, 813 (1996) (explaining that a subjective standard would require a court to inquire into the "state of mind" of the officer).

19. *See, e.g., Arizona v. Gant*, 556 U.S. 332 (2009) (allowing warrantless searches of a vehicle incident to a lawful arrest based on probable cause); *United States v. Robinson*, 414 U.S. 218 (1973) (allowing warrantless searches of persons incident to a lawful arrest based on probable cause); *see also Warden v. Hayden*, 387 U.S. 294 (1967) (permitting a warrantless search when an officer had probable cause to search and was presented with a legitimate exigent circumstance—the "hot pursuit" of a felon). *But see Terry v. Ohio*, 392 U.S. 1, 20–21 (1968) (approving a limited warrantless search on less than probable cause).

In contrast to seizures, searches generally require an additional step to establish Fourth Amendment reasonableness. To perform a valid search, a government agent must obtain a warrant, issued by a neutral judicial officer, which is based on a showing of probable cause. *Johnson v. United States*, 333 U.S. 10, 15 (1948). This requirement is known as the "per se" rule, which proclaims that a warrantless search, in and of itself, is unreasonable. *Katz v. United States*, 389 U.S. 347, 357 (1967) ("[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment . . ."). Seizures are not subject to the *per se* rule. *See Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001) (allowing a warrantless arrest if an officer has probable cause to believe that an individual committed an offense, however minor, in the presence of the officer); *United States v. Watson*, 423 U.S. 411, 421–24 (1976) (authorizing a warrantless arrest if an officer has probable cause to believe that an individual committed or is committing a felony). Therefore, Officer Ellis's seizure of Crawford and Butterbaugh is not unreasonable simply because he acted without a warrant.

20. *LAFAVE ET AL.*, *supra* note 15, § 3.3(a), at 141.

21. *Whren*, 517 U.S. at 817, 819.

22. *Id.* (holding that so long as probable cause is present in some form, the subjective state of mind of officers is irrelevant for determining reasonableness under the Fourth Amendment).

23. *See infra* notes 105–10 and accompanying text (emphasizing the inapplicability of probable cause and reasonable suspicion to situations lacking a criminal element).

had not committed a crime. Rather, Ellis performed the stop for at least three plausible reasons: (1) to provide assistance to Butterbaugh; (2) to assist the caller; and/or (3) to protect the general public from someone in Butterbaugh's alleged state. Put simply, Ellis seized to help, not to investigate a crime or pursue a criminal.

However, other measures of Fourth Amendment reasonableness are available. In particular, the "community caretaking" doctrine addresses the reasonableness of a special category of police activity that is not associated with criminal investigation.<sup>24</sup> As Mary Elisabeth Naumann explains, community caretaking activity is divisible into three categories: (1) "the automobile impoundment/inventory doctrine"; (2) "the emergency aid doctrine"; and (3) "the public servant [doctrine]."<sup>25</sup> The inventory doctrine allows police to perform searches of impounded vehicles or detained individuals.<sup>26</sup> Neither of these describes the actions of Officer Ellis and hence, this Note will not address the inventory aspect of community caretaking. Rather, the emphasis will be on what remains: the emergency aid and public servant doctrines.

This Note focuses on the reasonableness of "assistance seizures,"<sup>27</sup> which are a subset of the community caretaking doctrine. An assistance seizure, like the one performed by Officer Ellis, is a seizure completed for the purpose of providing aid.<sup>28</sup> The ultimate question is whether a police officer may ever perform such a seizure without violating the Fourth Amendment rights of the subject of the seizure. Part II broadly defines the community caretaking doctrine and its evolution at the state court level. Part III identifies the nature of "assistance seizures," by considering whether assistance seizures are better classified as part of the emergency aid doctrine or the public servant doctrine. It then examines the treatment of assistance seizures under Iowa law. Part IV details the Iowa Supreme Court's willingness to interpret article I, section 8 of the Iowa Constitution contrary to the Fourth Amendment. Finally, it suggests that the court adopt a different analytical framework for evaluating assistance seizures under the

---

24. See Michael R. Dimino, Sr., *Police Paternalism: Community Caretaking, Assistance Searches, and Fourth Amendment Reasonableness*, 66 WASH. & LEE L. REV. 1485, 1489-90 (2009).

25. Mary Elisabeth Naumann, Note, *The Community Caretaker Doctrine: Yet Another Fourth Amendment Exception*, 26 AM. J. CRIM. L. 325, 330 (1999).

26. See, e.g., *Colorado v. Bertine*, 479 U.S. 367, 374-75 (1987) (concluding that a search of an impounded vehicle pursuant to "reasonable police regulations relating to inventory procedures administered in good faith satisf[ies] the Fourth Amendment"); *Illinois v. Lafayette*, 462 U.S. 640, 647-48 (1983) (determining that an inventory search of a detained individual at the police station was reasonable); *South Dakota v. Opperman*, 428 U.S. 364, 375-76 (1976) (holding an inventory search of an impounded vehicle reasonable under the Fourth Amendment).

27. See Dimino, *supra* note 24, at 1545-47. This author credits Professor Dimino with the identification of "assistance searches."

28. See *id.*

Iowa Constitution. Namely, that the court should adhere to a distinction, originally formulated by Professor Michael Dimino, that divides community caretaking activity into one of two categories: (1) assistance seizures performed to help the subject of the seizure, or (2) assistance seizures performed to protect the general public.<sup>29</sup>

Because the emphasis is on the reasonableness of assistance seizures, which make up an obscure sliver of Fourth Amendment jurisprudence, several assumptions must be made at the outset. First, it is assumed that a stop by a police officer constitutes a seizure. There will be no discussion of whether or not an action actually invokes the Fourth Amendment and therefore, the Fourth Amendment will always be in play. Second, while searches and seizures are inevitably intertwined in Fourth Amendment jurisprudence and each serves to inform the other, this Note will only address searches in so far as it is necessary to clarify Fourth Amendment principles and inform the nature of assistance seizures. There will be no discussion of the merits of “assistance searches.”<sup>30</sup>

## II. COMMUNITY CARETAKING: INCEPTION AND EVOLUTION

This Part introduces the community caretaking doctrine and its evolution under state law. Part II.A discusses *Cady v. Dombrowski*,<sup>31</sup> the seminal case regarding community caretaking. Part II.B describes two primary methods that state courts use to evaluate searches and seizures under the community caretaking doctrine.

### A. ENTER COMMUNITY CARETAKING: CADY V. DOMBROWSKI

The Supreme Court first identified the “community caretaking function[.]” of police officers in *Cady v. Dombrowski*.<sup>32</sup> In *Cady*, Wisconsin police arrested an intoxicated driver, Dombrowski, after his vehicle collided with a highway guardrail.<sup>33</sup> Dombrowski identified himself as a Chicago police officer, which led the arresting officers to believe that he was in possession of his service revolver.<sup>34</sup> Roughly two and one-half hours after the arrest, a Wisconsin police officer ventured to the unguarded garage where Dombrowski’s vehicle had been towed and performed a search of the vehicle.<sup>35</sup> The officer intended to locate the weapon, but found instead

---

29. See *id.* at 1541–47; see also *infra* Part III.A (explaining in detail the distinction between a first- and third-party assistance seizure).

30. See generally Dimino, *supra* note 24 (discussing extensively the merits of assistance searches).

31. *Cady v. Dombrowski*, 413 U.S. 433 (1973).

32. *Id.* at 441.

33. *Id.* at 435–36.

34. *Id.* at 436–37. The authorities at the West Bend, Wisconsin, police department “were under the impression that Chicago police officers were required to carry their service revolvers at all times.” *Id.* at 437.

35. *Id.* at 436–37.

articles that appeared to be covered in blood.<sup>36</sup> The officer removed these items from the vehicle and returned with them to the police station.<sup>37</sup> Ultimately, the admission of the discovered items, as evidence, helped support Dombrowski's conviction for murder.<sup>38</sup>

The Supreme Court affirmed Dombrowski's conviction and ruled that the search of his vehicle was reasonable under the Fourth Amendment.<sup>39</sup> The Court observed that local police often legitimately engaged in "community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute,"<sup>40</sup> and that such activity is governed by the Fourth Amendment's reasonableness standard.<sup>41</sup>

Despite recognizing this type of activity, the *Cady* Court did not identify community caretaking as a new Fourth Amendment doctrine,<sup>42</sup> and it also failed to provide an explicit description of the level of "reasonableness" that justified the search in *Cady*.<sup>43</sup> As a result, some courts read *Cady* as creating a community caretaking justification (based on reasonableness) that should be broadly applied,<sup>44</sup> while others view it as merely an example of the community caretaking responsibility of police.<sup>45</sup> Whatever the true intent of the Supreme Court, various jurisdictions latched on to the *Cady* Court's community caretaking language and interpreted it expansively to include other types of searches and seizures.<sup>46</sup>

*B. DEFINING REASONABLENESS IN THE CONTEXT OF COMMUNITY CARETAKING:  
BALANCING TESTS AND EMERGENCY LIMITATIONS*

Professor Michael Dimino identifies two primary strains of opinion that attempt to provide substance to the *Cady* Court's decree of

36. *Id.* at 437.

37. *Id.*

38. *Id.* at 438–39.

39. *Id.* at 448. Much of the Court's reasoning addressed the lesser protection that the Fourth Amendment affords to automobiles, as compared to houses. *See id.* at 440–42. This implicates the inventory doctrine aspect of the community caretaking doctrine, which is beyond the scope of this Note.

40. *Id.* at 441.

41. *See id.* at 439.

42. *See id.* at 441–50. The Court made no mention of creating a new Fourth Amendment doctrine. In his dissent, Justice William Brennan emphasized that the majority did not find support for its decision in existing Fourth Amendment jurisprudence and thus, "serious[ly] depart[ed] from established . . . principles." *Id.* at 454 (Brennan, J., dissenting).

43. *See* Dimino, *supra* note 24, at 1490 (emphasizing the lack of guidance provided by the *Cady* Court in regard to the community caretaking function).

44. *See id.* at 1490 n.15.

45. *See, e.g.,* South Dakota v. Opperman, 428 U.S. 364, 374 (1976) (suggesting that performing an inventory search of a vehicle is necessary "to protect the community's safety").

46. *See* Dimino, *supra* note 24, at 1490 n.15.

“reasonableness.”<sup>47</sup> One is a balancing test that provides an analytical framework for defining reasonableness under the Fourth Amendment.<sup>48</sup> The other is a limitation that restricts the community caretaking doctrine to emergency situations.<sup>49</sup> Discussion of these strains generally is essential to understanding the present condition of the doctrine as applied by the states.

1. *State v. Anderson*: Balancing to Derive Reasonableness

Some jurisdictions use balancing tests to give meaning to the *Cady* Court’s requirement that community caretaking actions be “reasonable.”<sup>50</sup> These tests are specially formulated such that they are removed from the context of criminal activity and are without reference to probable cause.<sup>51</sup>

In *State v. Anderson*, Wisconsin police officers stopped a vehicle and detained its driver, Anderson.<sup>52</sup> The police observed Anderson moving “feverishly,” and a subsequent search uncovered weapons in the vehicle and on his person.<sup>53</sup> Wisconsin conceded that the officers lacked probable cause for the initial detainment of Anderson and his vehicle.<sup>54</sup> Instead, Wisconsin argued that the seizure was reasonable under the Fourth Amendment because the officers were acting as community caretakers.<sup>55</sup>

Considering this argument, the Wisconsin Court of Appeals formulated a three-part balancing test, which governs “when a community caretaker function is asserted as justification for the seizure of a person.”<sup>56</sup> The court held:

[T]he trial court must determine: (1) that a seizure within the meaning of the fourth amendment has occurred; (2) if so, whether the police conduct was [a] bona fide community caretaker activity;

---

47. *Id.* at 1498.

48. *See State v. Anderson*, 417 N.W.2d 411, 414 (Wis. Ct. App. 1987).

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

50. *See Cady v. Dombrowski*, 413 U.S. 433, 439 (1973).

51. *See id.* at 441 (stating that the community caretaking functions of officers often involve situations “in which there is no claim of criminal liability”); *see also Whren v. United States*, 517 U.S. 806, 817, 819 (1996) (finding that probable cause is a norm of reasonableness in the context of the Fourth Amendment); Dimino, *supra* note 24, at 1487–88 (arguing that references to probable cause and reasonable suspicion are not cognizable in the absence of criminal activity).

52. *Anderson*, 417 N.W.2d at 412. There the court explained that “[s]topping a vehicle and detaining its occupant constitute a seizure within the meaning of the fourth amendment.” *Id.* at 413.

53. *Id.* at 412. In the weeks prior to detaining Anderson, the officers received complaints, which they did not act upon, regarding the illegal parking of Anderson’s vehicle. *Id.* Anderson’s vehicle was not illegally parked prior to his detainment. *Id.*

54. *Id.* at 413 (“It is acknowledged that the police officers did not have probable cause to stop, seize or search Anderson’s vehicle.”).

55. *Id.*

56. *Id.* at 414.

and (3) if so, whether the public need and interest outweigh the intrusion upon the privacy of the individual.<sup>57</sup>

The foundational elements of the *Anderson* test emerged from *Terry v. Ohio*,<sup>58</sup> in which the Supreme Court of the United States determined reasonableness under the Fourth Amendment by balancing governmental interests in conducting searches or seizures against the personal privacy and liberty interests invaded by such activity.<sup>59</sup> *Terry* permitted an officer to “stop and frisk”<sup>60</sup> an individual, the prior examination of whom “leads [the officer] reasonably to conclude in light of his experience that criminal activity may be afoot.”<sup>61</sup> Thus, the *Anderson* test is an adaptation of the *Terry* reasonableness standard and is applicable when officers act outside of their role as law enforcers and lack both probable cause and reasonable suspicion.<sup>62</sup>

Ultimately, the *Anderson* court determined that the facts as presented supported only the first element of the balancing test—a seizure under the Fourth Amendment—and therefore remanded for further findings.<sup>63</sup> Wisconsin failed to show that the officers’ seizure of Anderson was a “bona fide community caretaker activity”<sup>64</sup> and consequently, the court could not engage in the analysis of the final element of the *Anderson* test, which requires a balancing of interests.<sup>65</sup> This result indicates two interim

57. *Id.* Although the first element of the *Anderson* test lists only the requirement of a Fourth Amendment seizure, in application the test includes searches as well. *See* *State v. Ziedonis*, 707 N.W.2d 565, 570 (Wis. Ct. App. 2005) (reading the first element of the *Anderson* test to be a determination of “whether a search or seizure, within the meaning of the Fourth Amendment, has taken place”).

58. *See* *Terry v. Ohio*, 392 U.S. 1 (1968); *Anderson*, 417 N.W.2d at 414 (holding that the *Anderson* balancing test “is essentially the *Terry* test, but applied in a community caretaker setting”).

59. *Terry*, 392 U.S. at 20–21.

60. *See id.* at 10 (defining a “stop and frisk” as the term referring to the ability of police officers to detain and search individuals). The emphasis, for present purposes, is placed on the authority of an officer to make the initial “stop” or detainment of an individual.

61. *Id.* at 30. The measure of reasonableness set forth in *Terry* is commonly dubbed “reasonable suspicion,” which is a diluted version of probable cause. *See, e.g.,* *Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 177, 185 (2004) (working from the premise that the *Terry* Court relied on a Fourth Amendment standard of “reasonable suspicion”). The rationale of *Terry* did not apply in *Anderson* because the officers who detained Anderson lacked both probable cause and reasonable suspicion. *Anderson*, 417 N.W.2d at 413.

62. *See Anderson*, 417 N.W.2d at 414. Current Iowa law utilizes the balancing test developed by the *Anderson* court in evaluating community caretaking cases. *See infra* Part III.B.1 for further discussion of *State v. Kurth*, 813 N.W.2d 270 (Iowa 2012), and *State v. Crawford*, 659 N.W.2d 537 (Iowa 2003).

63. *Anderson*, 417 N.W.2d at 414–15.

64. *Id.* at 414.

65. *Id.* In the end, the following *Anderson* decision was overruled on other grounds and the test was never fully implemented. *See State v. Anderson*, 454 N.W.2d 763 (Wis. 1990). However,

conclusions. First, some jurisdictions are willing to entertain “community caretaking” as a legitimate justification that may render certain searches and seizures reasonable under the Fourth Amendment.<sup>66</sup> Second, these jurisdictions are willing to define “reasonableness” as something other than probable cause or reasonable suspicion, which expands reasonable searches and seizures (deemed “community caretaking” functions) beyond the context of the criminal law.<sup>67</sup>

## 2. *People v. Mitchell*: Limiting Community Caretaking to Emergency Situations

As opposed to defining reasonableness with a balancing test, the latter strain of opinion limits the community caretaking doctrine to emergency situations.<sup>68</sup> In *People v. Mitchell*, the New York Court of Appeals formulated the dominant version of this limitation.<sup>69</sup> There, police were searching for a missing chambermaid who was last seen at the hotel at which she worked.<sup>70</sup> After a thorough examination of all public and managerial areas of the hotel, the search expanded to guest rooms.<sup>71</sup> Upon entering the defendant’s room, officers discovered the corpse of the maid in a state suggesting foul play.<sup>72</sup> The admission of evidence seized from the hotel room supported the defendant’s murder conviction.<sup>73</sup>

The court found the officers’ entry into the defendant’s room and their seizure of evidence did not violate the Fourth Amendment because the officers were responding to an emergency situation, which is “inherent in the very nature of their duties as peace officers.”<sup>74</sup> In reaching this conclusion, the court set forth three guidelines, the fulfillment of which governs whether the actions in question were reasonable because of an (alleged) emergency circumstance:

---

the balancing test remains influential. See *infra* Part III.B.1 for a discussion about the adoption of the *Anderson* test in Iowa and *infra* Part IV.B for a critical analysis of the *Anderson* test.

66. See *Wilson v. State*, 975 A.2d 877, 890–91 (Md. 2009) (adopting a three-part balancing test, formulated first by the Tenth Circuit, to determine if an officer’s seizure of an individual was a reasonable “community caretaking function” under the Fourth Amendment (citing *United States v. Garner*, 416 F.3d 1208 (10th Cir. 2005))).

67. See *supra* note 51 and accompanying text (explaining that references to probable cause and reasonable suspicion are not cognizable in the absence of criminal activity).

68. See *Dimino*, *supra* note 24, at 1502–03 (indicating that the other prevailing view concerning the community caretaking doctrine is actually a limitation).

69. *People v. Mitchell*, 347 N.E.2d 607, 609–11 (N.Y. 1976).

70. *Id.* at 608.

71. *Id.*

72. *Id.* at 608–09. The first officers on the scene in *Mitchell* actually searched the defendant’s room with his consent. *Id.* at 608. The search was merely “cursory” and the officers discovered nothing. *Id.* Only after a senior officer reentered the defendant’s room did police uncover the mutilated corpse of the “unfortunate chambermaid.” *Id.* at 608–09.

73. *Id.* at 609.

74. *Id.* (citations omitted) (internal quotation marks omitted).

(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>75</sup>

The court determined that the officers in *Mitchell* satisfied the newly formulated test.<sup>76</sup> First, the missing maid raised a reasonable belief that an emergency situation existed.<sup>77</sup> Second, the search for the maid was motivated by the simple purpose of determining her whereabouts.<sup>78</sup> Put another way, the officers were not searching the hotel rooms to apprehend a criminal or to obtain evidence; in fact, the officers were unsure if a crime had taken place at all.<sup>79</sup> Thus, the primary reason for the search was to alleviate the emergency situation by locating the maid and providing her with assistance, if needed.<sup>80</sup>

Finally, the emergency situation was reasonably related to the search of the defendant's room.<sup>81</sup> The officers had searched all public areas of the hotel, the maid was last seen on the same floor as the defendant's room, and it was the last to be searched.<sup>82</sup> In light of these facts, the court determined that "a search of [the defendant's] room was imperative."<sup>83</sup>

Although the *Mitchell* court did not explicitly use the *Cady* Court's language to establish its test, the *Mitchell* decision implicates "community caretaking" activity. *Mitchell*'s third element requires that officers have a "reasonable basis[] approximating probable cause" with regard to the search in question.<sup>84</sup> Something approximating probable cause is not probable

---

75. *Id.*

76. *Id.* at 611 ("The People have amply sustained their burden of justifying the . . . search of defendant's room.").

77. *Id.* at 610. The court determined that "[i]t was highly probable that [the maid] was [located] somewhere in the hotel." *Id.*

78. *See id.*

79. *Id.* The maid was missing for reasons unknown and kidnapping or murder were simply two of many options. *Id.* The senior officer on the scene testified "he had no reason to believe a crime was being committed in [the] defendant's room when he entered." *Id.*

80. *Id.* ("The [officers'] primary concern was the health and safety of the maid.").

81. *Id.*

82. *Id.* The maid's "partially eaten lunch" was also found on the defendant's floor. *Id.* There are many other factors that could connect the place to be searched to the emergency situation, such as "screams or the odor of a decaying corpse." *Id.* (citations omitted).

83. *Id.* at 611.

84. *Id.* at 609.

cause.<sup>85</sup> Like the *Anderson* test, then, *Mitchell* legitimizes police action that extends beyond the scope of criminal investigation.<sup>86</sup> However, unlike *Anderson*, *Mitchell* is a limitation. By its terms, it restricts permissible searches to emergency situations and eschews the possibility, allowed under *Anderson*, that an officer's action may be reasonable because "the public need and interest outweigh the intrusion upon the privacy of the individual."<sup>87</sup>

In sum, jurisdictions that have addressed community caretaking have one of two dominant views: either a limitation to emergency situations under *Mitchell* or a broad balancing test under *Anderson*. *Mitchell* is considerably more popular.<sup>88</sup>

### III. ANALYZING COMMUNITY CARETAKING: ASSISTANCE SEIZURES

Having considered the evolution of the community caretaking doctrine, this Part focuses on assistance seizures. Part III.A isolates assistance seizures from community caretaking in general; Part III.B considers current Iowa law regarding assistance seizures.

#### A. SORTING COMMUNITY CARETAKING ACTIVITIES: IDENTIFYING THIRD- AND FIRST-PARTY ASSISTANCE SEIZURES

Mary Elizabeth Naumann explains that community caretaking activity encompasses two relevant doctrines: the emergency aid doctrine and public servant doctrine.<sup>89</sup> *Mitchell* illustrates the emergency aid doctrine, which is based "on the premise that officers should be able to act without a warrant when they reasonably believe someone needs immediate attention."<sup>90</sup>

In contrast, *Anderson* provides an example of the public service doctrine. This doctrine is the "most commonly recognized form" of community caretaking and allows government agents to perform searches and seizures outside of the realm of criminal investigation.<sup>91</sup> Officer activity in this area extends in two directions:<sup>92</sup> first, actions that involve approaching individuals in public areas to inquire about potential problems;<sup>93</sup> second, "more intrusive" actions that involve entering a private

---

85. *See id.*

86. *See supra* note 51 and accompanying text (emphasizing that probable cause and reasonable suspicion are only cognizable in the context of criminal investigation).

87. *State v. Anderson*, 417 N.W.2d 411, 414 (Wis. Ct. App. 1987).

88. *See infra* note 174 and accompanying text (explaining that over ten jurisdictions adhere to the *Mitchell* rule).

89. Naumann, *supra* note 25, at 330.

90. *Id.* at 331 (citing *Mincey v. Arizona*, 437 U.S. 385 (1978)).

91. *Id.* at 338 (citing *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973)).

92. *Id.* at 339.

93. *Id.* In most circumstances, this type of community caretaking need not be justified under the Fourth Amendment. *See, e.g.*, *Florida v. Bostick*, 501 U.S. 429 (1973). So long as an officer does not seize an individual, nothing prevents the officer from approaching an individual in a public place and asking questions, or asking her consent to search her

place, such as a home, to provide aid or respond to a disturbance.<sup>94</sup> Professor Dimino identifies the second type of officer action as either a third- or first-party “assistance search.”<sup>95</sup> A third-party assistance search is “designed to assist the general public or a specific person or persons other than the one whose rights are implicated by the search.”<sup>96</sup> *Cady* is an example of a third-party assistance search.<sup>97</sup> A first-party assistance search, in contrast, occurs when “police are acting to minimize a threat posed *to* (rather than *by*) the subject of the search.”<sup>98</sup>

In addition to “assistance searches,” the second type of officer action identified by Naumann includes another subset—when officers stop a vehicle to provide aid to its occupants and/or to protect the public from an occupant who is in distress.<sup>99</sup> Following the lead of Professor Dimino, this Note categorizes this type of officer action as an “assistance seizure.” Just like their counterpart assistance searches, assistance seizures can also be described as either third- or first-party.<sup>100</sup> A third-party assistance seizure is performed for the benefit of the general public or for the benefit of individuals other than the subject of the seizure.<sup>101</sup> In contrast, a first-party assistance seizure is performed for the benefit of the subject of the seizure.<sup>102</sup> For example, if Officer Ellis’s purpose in stopping Crawford’s vehicle was to help Butterbaugh,<sup>103</sup> then this constitutes a first-party assistance seizure. However, if Ellis stopped the vehicle to protect the public from someone in Butterbaugh’s alleged condition, then this is a third-party assistance seizure. What follows will provide examples of assistance seizures, via Iowa case law, and flesh out the nature of these seizures in general.<sup>104</sup>

---

belongings or person. *Id.* at 434. A seizure in these circumstances is measured by an objective standard of whether a reasonable person in the situation would feel as if she were free to leave. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980).

94. Naumann, *supra* note 25, at 339–40.

95. See Dimino, *supra* note 24, at 1513–14 (emphasizing that the focus of his article is on the reasonableness of “assistance searches”); see also *id.* at 1541, 1545 (identifying first- and third-party assistance searches).

96. *Id.* at 1541.

97. See *supra* Part II.A. The officers searched the defendant’s vehicle in order to prevent a deviant from gaining access to the service revolver and potentially using it to harm the public.

98. Dimino, *supra* note 24, at 1545.

99. Naumann, *supra* note 25, at 339.

100. See Dimino, *supra* note 24, at 1541, 1545.

101. See *id.* at 1541. *Anderson* is an example of a third-person assistance search. See *supra* Part II.B.1. The officers (presumably) stopped *Anderson* because he was troublesome to the general public. This author is not suggesting that the stop performed in *Anderson* was reasonable.

102. See Dimino, *supra* note 24, at 1545.

103. See *supra* Part I.

104. See *infra* Part III.B.1 (discussing current Iowa law regarding assistance seizures); *infra* Part III.B.2 (addressing the special concurrence regarding community caretaking seizures in *State v. Kurth*, 813 N.W.2d 270, 281–83 (Iowa 2012) (Appel, J., concurring specially)).

Before proceeding, however, it is important to emphasize an underlying assumption that this Note has hinted at, but has not explicitly stated. Professor Dimino persuasively argues that classical Fourth Amendment warrant requirements<sup>105</sup> and “individualized suspicion” are inapplicable in the context of assistance searches and seizures because of the lack of a criminal-investigatory element.<sup>106</sup> “When police act to attend to someone who is sick or injured, there is no suspicion of crime, let alone the quantum of suspicion that would satisfy the constitutional requirements applicable in the law-enforcement context.”<sup>107</sup> Again, using Officer Ellis as an example, he stopped the vehicle to provide aid—not to investigate a crime or apprehend a criminal. Ellis’s seizure could not possibly be justified if probable cause and other tests that require an element of criminality were the only measures of Fourth Amendment reasonableness. Therefore, the Note will assume that probable cause and reasonable suspicion are inapplicable in determining the reasonableness of community caretaking activities.

Because this assumption removes criminal-investigative concerns from the possible justifications for assistance seizures, several government interests mentioned at the outset are now irrelevant in deriving reasonableness.<sup>108</sup> For obvious reasons, the interest in the enforcement of criminal laws and the preservation of evidence are irrelevant. However, one primary governmental interest is preserved: the protection of the general public.<sup>109</sup> This government interest, then, must be weighed against the individual interest in liberty<sup>110</sup> when evaluating the reasonableness of an assistance seizure.

*B. CURRENT IOWA LAW REGARDING COMMUNITY CARETAKING: A FOCUS ON ASSISTANCE SEIZURES*

The Iowa Supreme Court recently addressed assistance seizures. In *State v. Kurth*, the court expressed its most contemporary application of the community caretaking doctrine, evaluating the Fourth Amendment

---

105. See Dimino, *supra* note 24, at 1521 (stating that the traditional reason for requiring a search warrant—officers being caught up in the “competitive enterprise of ferreting out” crime—does not apply to people in need of help (quoting *Johnson v. United States*, 330 U.S. 10, 14 (1948)) (internal quotation marks omitted)).

106. See *id.* at 1524 (“Community-caretaking cases that do not present law-enforcement concerns, however, present situations where an individualized-suspicion requirement is not only impractical, but would not make sense.”); see also *supra* note 51 (detailing how probable cause and reasonable suspicion are nonsensical when considering community caretaking activity).

107. Dimino, *supra* note 24, at 1524.

108. See *supra* notes 8–14 and accompanying text (describing a number of recognized government interests).

109. See, e.g., *Terry v. Ohio*, 392 U.S. 1, 27 (1968) (allowing a frisk of an individual to protect the officer and the general public from dangerous weapons).

110. See *id.* at 19 n.16 (suggesting that the personal interest in liberty is relevant when evaluating the reasonableness of a seizure); see also *supra* note 9.

reasonableness of a seizure.<sup>111</sup> Both *Kurth* and the case on which it relies provide examples of assistance seizures.<sup>112</sup> Through the *Kurth* opinion, the court expressed an interest in revising the community caretaking doctrine under Iowa law.

1. *Kurth* and *Crawford*: Adoption of the *Anderson* Test

In *Kurth*, a police officer, Jones, heard a loud crash while on patrol in his police cruiser.<sup>113</sup> Jones testified that he saw a sedan, which was “traveling east[] and ‘enveloped in a cloud of dust or smoke.’”<sup>114</sup> He followed the vehicle, communicating with another officer regarding his pursuit and his belief that the vehicle may have struck a road sign.<sup>115</sup> The other officer quickly informed Jones that the vehicle did not knock down the road sign.<sup>116</sup> Despite this information, Jones continued to follow the vehicle, which ultimately parked at a restaurant.<sup>117</sup> From his position on the road, Jones observed some slight damage to the front of the vehicle, at which point he positioned his cruiser behind the vehicle and activated his overhead lights—effectively preventing its egress.<sup>118</sup> Jones approached the driver of the vehicle, Kurth, and informed him of the damage.<sup>119</sup> After initiating the conversation, “Jones detected an odor of an alcoholic beverage” and noticed other indications that Kurth was inebriated.<sup>120</sup> Kurth submitted to a Breathalyzer test and registered “nearly three times the legal limit.”<sup>121</sup> Based on evidence obtained from this stop, Kurth was convicted of operating a motor vehicle while under the influence of alcohol.<sup>122</sup>

Kurth appealed, claiming Officer Jones’s stop of his vehicle was unreasonable under the Fourth Amendment and evidence obtained from the stop should have been excluded from his trial.<sup>123</sup> The State conceded Kurth did not violate any traffic laws, and therefore Jones lacked probable

---

111. *State v. Kurth*, 813 N.W.2d 270 (Iowa 2012).

112. *See id.*; *State v. Crawford*, 659 N.W.2d 537 (Iowa 2003).

113. *Kurth*, 813 N.W.2d at 271.

114. *Id.*

115. *Id.*

116. *Id.* The conversation between Jones and the other officer, Weiler, revealed that the vehicle ran over the road sign, but did not knock it down. *Id.* This is not a traffic violation. *Id.* at 272 (“Jones testified that he never observed [the driver] commit any traffic violations . . .”).

117. *Id.*

118. *Id.* From this point forward, Jones testified, “the vehicle and its occupants were not free to go.” *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.* at 272–73; *see also supra* note 15 and accompanying text (detailing the remedy for violations of the Fourth Amendment’s reasonableness requirement).

cause or reasonable suspicion to validate the seizure.<sup>124</sup> However, it argued the stop “was justified under the community caretaking exception” to these Fourth Amendment requirements.<sup>125</sup>

Addressing the State’s claim, the Iowa Supreme Court relied on *State v. Crawford*, decided nine years earlier, which addressed the same type of community caretaking at issue in *Kurth*.<sup>126</sup> In *Crawford*, as explained in the Introduction to this Note, Officer Ellis stopped a vehicle to provide aid to its passenger, Butterbaugh.<sup>127</sup> The stop resulted in the arrest and conviction of the vehicle’s driver, Crawford, for operating while intoxicated.<sup>128</sup>

Crawford appealed and the State, conceding that Ellis lacked probable cause or reasonable suspicion to stop the vehicle, defended the conviction on community caretaking grounds.<sup>129</sup> For the first time,<sup>130</sup> the Iowa Supreme Court adopted the *Anderson* balancing test<sup>131</sup> to evaluate whether the action in question, performed pursuant to community caretaking concerns, was reasonable under the Fourth Amendment.<sup>132</sup>

The court determined that the officer’s actions satisfied the three-part *Anderson* test and rendered the stop reasonable under the Fourth Amendment.<sup>133</sup> The first element was satisfied because stopping a vehicle is a seizure within the meaning of the Fourth Amendment.<sup>134</sup>

The court evaluated the second element using an objective standard: an action qualifies as “a bona fide community caretaker activity” if a reasonable person in the officer’s position would “believe an emergency existed.”<sup>135</sup> The facts available to Officer Ellis—that Butterbaugh had taken “some pills,” had become “physically aggressive,” had requested a police officer take him home, and had left in a vehicle—justified the officer’s belief that an emergency existed.<sup>136</sup>

---

124. *Id.* at 272–73.

125. *Id.* at 273.

126. *See* *State v. Crawford*, 659 N.W.2d 537, 539–40 (Iowa 2003).

127. *Id.* at 540; *see also supra* Part I.

128. *Crawford*, 659 N.W.2d at 540. The purpose of stopping the vehicle, the officer claimed, was to see if “everything was okay” with Butterbaugh. *Id.* (internal quotation marks omitted). Before the stop, the officer did not know that Crawford was driving the vehicle and, contrary to the officer’s command, Crawford exited the vehicle and followed the officer back to his cruiser. *Id.*

129. *Id.*

130. The Iowa Supreme Court had confronted community caretaking cases before *Crawford*. *See id.* at 542. However, it had yet to adopt an articulable standard other than Fourth Amendment “reasonableness.” *See id.*

131. *See supra* note 57 and accompanying text (stating the factors considered in the *Anderson* balancing test).

132. *Crawford*, 659 N.W.2d at 543 (citing *State v. Anderson*, 417 N.W.2d 411, 414 (Wis. Ct. App. 1987)).

133. *Id.* at 543–44.

134. *Id.* at 543.

135. *Id.*

136. *Id.* (internal quotation marks omitted).

Finally, the court balanced the interests involved. It determined that the stop was a “minimal intrusion . . . upon Crawford’s rights.”<sup>137</sup> Further, the intrusion was outweighed by “the public need and interest” to determine Butterbaugh’s condition.<sup>138</sup>

After discussing the facts and analysis of *Crawford*, the *Kurth* court also applied the *Anderson* test.<sup>139</sup> It noted the objective nature<sup>140</sup> of the test and that the State bore the burden of satisfying the elements.<sup>141</sup> As in *Crawford*, the first element was satisfied easily. The State conceded that Kurth was seized and “not free to go” when Officer Jones activated his overhead lights and blocked in the vehicle.<sup>142</sup>

The State, however, failed to carry its burden on the second and third elements. The Court found that Jones was not acting in pursuance of a “bona fide community caretaking activity” when he seized Kurth.<sup>143</sup> In particular, Jones’s decision to activate his overhead lights and block in Kurth’s vehicle, in the words of the *Crawford* opinion, was “more than . . . reasonably necessary to determine whether a person [was] in need of assistance, and to provide that assistance.”<sup>144</sup> Jones did not need to physically block in Kurth’s vehicle to inform him of the damage.<sup>145</sup> Further, at the time of the seizure, Jones had already observed the insignificance of the harm.<sup>146</sup> In short, Jones’s initial decision to follow Kurth and ascertain if his vehicle was damaged was likely in pursuance of a bona fide community caretaking activity.<sup>147</sup> However, Jones’s subsequent observations and actions caused the community caretaking justification to evaporate.<sup>148</sup>

137. *Id.*

138. *Id.*

139. *State v. Kurth*, 813 N.W.2d 270, 277 (Iowa 2012).

140. *See supra* notes 16–18 and accompanying text (explaining the distinction between subjective and objective analyses).

141. *Kurth*, 813 N.W.2d at 277 (“To establish ‘reasonableness,’ the state has the burden of ‘showing specific and articulable facts that indicate their actions were proper.’” (quoting *Crawford*, 659 N.W.2d at 542) (internal quotation marks omitted)).

142. *Id.*

143. *Id.* at 277–80.

144. *Id.* at 278 (quoting *Crawford*, 659 N.W.2d at 542–43) (internal quotation marks omitted).

145. *See id.* If Officer Jones had simply approached Kurth’s vehicle on foot (without blocking it in), then no seizure would have occurred. *See supra* note 93 and accompanying text (discussing how officers may approach and engage individuals in public places without effecting a Fourth Amendment seizure).

146. *Kurth*, 813 N.W.2d at 278.

147. *See id.* The court suggested that the seizure may have been justified under the *Anderson* test if Jones had stopped “Kurth’s moving vehicle immediately after the incident to advise him that he had struck a road sign and needed to inspect his car for damage.” *Id.* This, however, does not mean that the third element of the *Anderson* test would be satisfied.

148. *Id.* at 278–80. Further damning to the State’s argument was Jones’s decision to call in Kurth’s license plate number, which “seems inconsistent with a public safety purpose but is certainly consistent with an investigative purpose.” *Id.* at 279.

The court also found the third element unsatisfied and concluded that the “public need and interest” did not “outweigh the intrusion upon [Kurth’s] privacy.”<sup>149</sup> Again, at the time of the seizure, Jones knew that Kurth’s vehicle was drivable and the damage to it minimal.<sup>150</sup> The concern for public safety was “marginal at best,”<sup>151</sup> and therefore, Jones need not have seized Kurth to provide him with assistance.<sup>152</sup> “[B]ased upon a purely objective appraisal of the evidence,” the court determined that Jones’s seizure of Kurth was unreasonable and violated the Fourth Amendment.<sup>153</sup>

The *Kurth* court was relatively faithful to the analysis employed in *Crawford*. However, some inconsistencies exist in the application of the *Anderson* test. First, in determining the existence of a “bona fide community caretaker activity,” the *Kurth* court did not ask the key *Crawford* question—whether the facts as presented would lead a reasonable officer to believe that an emergency existed.<sup>154</sup>

Second, the *Kurth* court did not explicitly reject a consideration of Officer Jones’s subjective intent prior to completing the stop.<sup>155</sup> The State argued that the subjective intent of the officer was irrelevant, claiming that whether or not the actual reason for the stop was pretextual (i.e., for some purpose other than providing assistance), it had no effect on the reasonableness of the community caretaking activity.<sup>156</sup> The court discussed the benefits of considering subjective intent in the community caretaking context, which would require that the actual motivation of the officer be the provision of assistance.<sup>157</sup> The *Crawford* court never mentioned the possibility of considering subjective intent.<sup>158</sup> However, United States Supreme Court precedent, stemming from *Whren v. United States*<sup>159</sup> and *Brigham City, Utah v.*

---

149. *Id.* at 280 (quoting *Crawford*, 659 N.W.2d at 543).

150. *Id.*

151. *Id.* Being that the vehicle was presumably fully functional and that Jones never observed Kurth commit a traffic violation, the court concluded that the State’s argument that Kurth’s vehicle posed a public danger was quite weak. *Id.*

152. *Id.*

153. *Id.*

154. *State v. Crawford*, 659 N.W.2d 537, 543 (Iowa 2003).

155. *See Kurth*, 813 N.W.2d at 279.

156. *Id.*

157. *Id.* at 279 n.3. In the context of community caretaking, “it is the officer’s activity (i.e., his or her engagement in community caretaking) that justifies the actions, so it may be appropriate to require both objective reasonableness *and* subjective good faith.” *Id.* (citing Naumann, *supra* note 25, at 365). Further, the court considered the argument “that a subjective good faith component is needed to keep the community caretaking [doctrine] within its own confines and prevent it from becoming a way to expand other types of . . . searches and seizures.” *Id.*

158. *See Crawford*, 659 N.W.2d 537.

159. *Whren v. United States*, 517 U.S. 806, 813 (1996) (holding that so long as probable cause exists, the subjective intent of police officers is irrelevant).

*Stuart*,<sup>160</sup> ultimately caused the *Kurth* court to reject a consideration of subjective intent in favor of a purely objective analysis under *Anderson*.<sup>161</sup> Nevertheless, the *Kurth* court used the radio communications of Jones and his compatriot as “evidence of what a *reasonable* officer would have thought was necessary” in the situation.<sup>162</sup> This suggests that the current court (which decided *Kurth*), while bound by federal precedent when addressing the Fourth Amendment, would not be wholly opposed to an argument advocating the adoption of subjective intent under article I, section 8 of the Iowa Constitution.<sup>163</sup>

## 2. Special Concurrence: An Open Question Regarding Assistance Seizures Under the Iowa Constitution

Both *Kurth* and *Crawford* provide examples of first-party assistance seizures.<sup>164</sup> In each case, an officer stopped a vehicle and seized the individuals inside for the claimed purpose of providing assistance to the occupants.<sup>165</sup> The Iowa Supreme Court specifically adopted the *Anderson* test in *Crawford* to evaluate the reasonableness of assistance seizures. Interestingly, it has not utilized the test to consider any other type of community caretaking activity.

At the conclusion of the *Kurth* opinion, Justice Brent R. Appel filed a special concurrence emphasizing that the holding in *Kurth* is based solely on the Fourth Amendment—not the Iowa Constitution.<sup>166</sup> Article I, section 8 of the Iowa Constitution contains a search and seizure provision that is essentially identical to the Fourth Amendment,<sup>167</sup> and the Iowa Supreme Court has yet to interpret any community caretaking case under the State

160. *Brigham City, Utah v. Stuart*, 547 U.S. 398, 404–05 (2006) (rejecting consideration of subjective intent when evaluating the reasonableness of a search performed to provide emergency aid).

161. *Kurth*, 813 N.W.2d at 279 n.3.

162. *Id.* at 279. The court seems to conclude, based on the conversation between Jones and the other officer, that Jones stopped *Kurth* for some reason other than to provide assistance. *See id.* at 271–72, 279 (explaining the conversation between the officers and the court’s conclusion that a reasonable officer in Jones’s situation would not have stopped *Kurth*).

163. The Iowa Supreme Court has yet to interpret the Iowa Constitution with regard to community caretaking. *See infra* Part III.B.2.

164. *See Dimino, supra* note 24, at 1545. The seizures in *Crawford* and *Kurth*, to a varying extent, could also be classified as third-party assistance searches, i.e., performed to aid the public. *Id.* at 1541.

165. *Id.* at 1545.

166. *Kurth*, 813 N.W.2d at 281 (Appel, J., concurring specially) (“The result in this case is based solely on the Fourth Amendment to the United States Constitution. It is not based upon article I, section 8 of the Iowa Constitution.”).

167. IOWA CONST. art. I, § 8 (“The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated; and no warrant shall issue but upon probable cause . . .”).

Constitution.<sup>168</sup> Justice Appel acknowledged the court has a strong tradition of interpreting the Iowa Constitution contrary to the United States Constitution, with particular interest in providing more protection under article I, section 8 than is provided by the Fourth Amendment.<sup>169</sup> For example, in two recent cases, *State v. Ochoa* and *State v. Cline*, the court rejected interpretations of the Fourth Amendment issued by the United States Supreme Court in favor of more protective interpretations under article I, section 8.<sup>170</sup> Therefore, Iowa precedent encourages divergent interpretation of the Iowa Constitution in appropriate circumstances. Interpreting the Iowa Constitution in regard to assistance seizures, a topic over which the court has already expressed considerable interest, would not be a radical decision. It certainly would not be the first (or last) time the court exercised its independent interpretative ability.

Further, Justice Appel noted that some jurisdictions employ tests other than *Anderson* when evaluating community caretaking. In particular, he cited *Provo City v. Warden*, a case in which the Court of Appeals of Utah modified the third element of the *Anderson* test.<sup>171</sup> Finally, he suggested that the court—if presented with an appropriate case and a persuasive argument—would consider adopting a different test for evaluating community caretaking activity under Iowa law.<sup>172</sup>

#### IV. CRITICISMS OF THE *MITCHELL* AND *ANDERSON* TESTS

Taking Justice Appel's special concurrence to heart and noting the Iowa Supreme Court's interest in assistance seizures, this Part: (1) evaluates the *Mitchell* and *Anderson* tests in the light of the assistance searches highlighted by the *Kurth* and *Crawford* opinions; and (2) suggests modifications to current Iowa law that recognize the distinction between first- and third-party assistance seizures. Assistance seizure cases, and community caretaking cases

---

168. *Kurth*, 813 N.W.2d at 282 (Appel, J., concurring specially) (“Nothing in the majority opinion should be misconstrued to suggest that [the court has] affirmatively adopted the federal framework as the proper search and seizure framework under the Iowa Constitution in all cases.”).

169. *See id.* at 282–83. The Iowa Supreme Court “jealously protect[s] [its] right to engage in independent analysis of state constitutional claims.” *Zaber v. City of Dubuque*, 789 N.W.2d 634, 654 (Iowa 2010).

170. *Kurth*, 813 N.W.2d at 282–83 (Appel, J., concurring specially) (citing *State v. Ochoa*, 792 N.W.2d 260, 291 (Iowa 2010); *State v. Cline*, 617 N.W.2d 277, 292 (Iowa 2000)).

171. *Provo City v. Warden*, 844 P.2d 360, 364–65 (Utah Ct. App. 1992) (limiting application of the *Anderson* test to emergency situations).

172. It is well established that state supreme courts retain the authority to interpret their state constitutions contrary to the Federal Constitution. *See* WELSH S. WHITE & JAMES J. TOMKOVICZ, CRIMINAL PROCEDURE: CONSTITUTIONAL CONSTRAINTS UPON INVESTIGATION AND PROOF 73 (6th ed. 2008) (“[S]tate courts are free and entitled to interpret state constitutional guarantees that are identical, equivalent, or similar to the Fourth Amendment . . .”). However, the Fourth Amendment is the floor level of protection and, as a result, a state court can only provide its citizens “greater privacy and liberty protection.” *Id.*

in general, are inherently fact sensitive. Therefore, this Part does not dispute the decisions in *Kurth* and *Crawford*. Rather, it provides an analytical framework that better explains the outcome of each case by highlighting and balancing the key interests. Also, it attempts to simplify the judicial resolution of assistance seizures in future cases.

#### A. EVALUATION OF THE MITCHELL TEST

The sheer jurisdictional popularity of the *Mitchell* test requires its inclusion in a discussion evaluating community caretaking.<sup>173</sup> However, for at least two reasons, *Mitchell* is not the ideal framework for evaluating assistance seizures. First, the language of the test limits it to *searches* and does not address seizures. As a result, changes to *Mitchell* are necessary from the outset to make the standard applicable to assistance *seizures*.

In addition, the *Mitchell* test is almost universally directed at *searches* in practice. At least ten jurisdictions utilize the *Mitchell* test, all of which use it exclusively to justify searches.<sup>174</sup> Thus, while “seizure” could be substituted for “search” throughout the *Mitchell* test, the lack of parallel analysis provided by other jurisdictions would essentially require the court to start over. This is an overly complicated result.

Second, failing to adopt *Mitchell* would not prevent police officers from acting reasonably in an emergency situation. In *Brigham City, Utah v. Stuart*, the Supreme Court held that if certain exigent circumstances<sup>175</sup> are present, “[i]t is reasonable for an officer to ‘enter a home . . . to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.’”<sup>176</sup> Even though exigent circumstances only occur in the criminal context,<sup>177</sup> *Brigham City* allows officers to intervene in a wide variety of emergency situations, such as altercations between others who sustain

173. See *supra* note 75 and accompanying text (listing the elements of the *Mitchell* test).

174. See, e.g., *State v. Gibson*, 267 P.3d 645, 658–59 (Alaska 2012) (adopting the three-part *Mitchell* test); *State v. Mendez*, 66 P.3d 811, 820–22 (Kan. 2003) (discussing and applying *Mitchell*); *State v. Matthews*, 2003 ND 108, ¶¶ 28–44, 665 N.W.2d 28, 37–41 (describing the facts of *Mitchell* and applying the test); see also Dimino, *supra* note 24, at 1503–04 (listing over ten jurisdictions that apply the *Mitchell* test).

175. An exigency is a circumstance that makes it “imperative” for an officer to act. See *Warden v. Hayden*, 387 U.S. 294, 298 (1967) (quoting *McDonald v. United States*, 335 U.S. 451, 456 (1948)) (internal quotation marks omitted) (allowing the search of a home when officers were pursuing a suspect in an armed robbery).

176. WHITE & TOMKOVICZ, *supra* note 172, at 195 (quoting *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006)). Naumann notes that courts often refer to exigent circumstances and the emergency aid doctrine exception interchangeably. Naumann, *supra* note 25, at 332.

177. See WHITE & TOMKOVICZ, *supra* note 172, at 194–96 (explaining that depending on the situation, an exigent circumstance must be supported by probable cause or reasonable suspicion); Naumann, *supra* note 25, at 332 (“The exigent circumstances doctrine applies only when the police are acting in their ‘crime-fighting’ role.”).

injuries.<sup>178</sup> Therefore, officers do not need to rely on *Mitchell* if confronted by an emergency situation that requires immediate attention.

More significantly, however, the *Mitchell* test and the emergency situations it encompasses do not align with assistance seizures. Both are undoubtedly community caretaking functions, but Naumann recognizes the distinction between the two, with the former classified as the “emergency aid doctrine” and the latter as the “public servant exception.”<sup>179</sup> Emergency situations and the emergency aid doctrine require that officers provide “immediate” aid, while assistance seizures under the public servant doctrine lack such a requirement.<sup>180</sup> The lack of immediacy is consistent with the Iowa Supreme Court’s interpretation of assistance seizures. In *Crawford*, for example, the court determined that Officer Ellis performed a reasonable assistance seizure, but in reaching this conclusion it did not require that Ellis provide *immediate* aid upon viewing the vehicle that allegedly contained Butterbaugh.<sup>181</sup>

Thus, it is not that *Mitchell* is a poorly formulated standard, but rather that it is not applicable to assistance seizures. Furthermore, rejecting *Mitchell* in favor of a test aimed specifically at assistance seizures would not preclude the court from adopting *Mitchell* at a later point if presented with an appropriate case.<sup>182</sup>

#### B. EVALUATION OF THE ANDERSON TEST

Because the *Anderson* test is geared toward assistance seizures and the public servant doctrine,<sup>183</sup> it is the most logical choice for evaluating the reasonableness of assistance seizures. However, the test is not without its flaws. This Subpart critiques each element of the *Anderson* test, addresses possible modifications, and advocates a solution.

##### 1. Fourth Amendment Seizure

The first element, asking if there was a Fourth Amendment seizure, is “strictly preliminary” and does nothing to inform the reasonableness of the community caretaking activity.<sup>184</sup> While this may be the case, it still brings to bear an important consideration: if in fact no seizure took place, then there

178. See *Brigham City*, 547 U.S. at 406 (stating that officers could enter a home to break up a fight and provide first aid if necessary).

179. Naumann, *supra* note 25, at 330; see also *supra* Part III.A.

180. See Naumann, *supra* note 25, at 331–34, 338–41.

181. *State v. Crawford*, 659 N.W.2d 537, 540 (Iowa 2003) (noting that Officer Ellis followed the vehicle for a time before stopping it).

182. Such a discussion, however, is beyond the scope of this Note.

183. Naumann, *supra* note 25, at 339–40 (suggesting that assistance seizures are the more intrusive aspect of the public servant doctrine).

184. See Dimino, *supra* note 24, at 1501 (criticizing the first two elements of the *Anderson* test).

is no implication of either the United States or Iowa constitution.<sup>185</sup> Further, “a seizure within the meaning of the fourth amendment”<sup>186</sup> and a “seizure” under the Iowa Constitution are exactly the same.<sup>187</sup> The element could be modified to reflect the Iowa Constitution specifically, but such a change is unnecessary. Therefore, the first element of *Anderson* should be retained.

## 2. Bona Fide Community Caretaker Activity

The second element of the *Anderson* test, whether police conduct constituted a “bona fide community caretaker activity,”<sup>188</sup> is more problematic than the first. *Anderson*, as applied by the Iowa Supreme Court, is fully objective, meaning that the subjective motivations of the officer in performing the assistance seizure are irrelevant.<sup>189</sup> However, this Note argues that this element should entail both a subjective and an objective consideration.<sup>190</sup> In other words, determining whether a seizure is a bona fide community caretaking activity should depend on: (1) whether the seizing officer acted in subjective good faith (i.e., the officer’s primary intention in making the stop was to provide aid);<sup>191</sup> and (2) that the officer was objectively reasonable in acting on his intention (i.e., a reasonable officer would have acted concurrently under similar circumstances).

Both Naumann and Professor Dimino highlight the importance of considering good faith subjective intent in the community caretaking context as opposed to the criminal.<sup>192</sup> This is due to the respective

185. Both the Iowa and United States constitutions prevent only unreasonable searches and seizures. U.S. CONST. amend. IV; IOWA CONST. art. I, § 8. The absence of a search or seizure invokes neither constitution.

186. *State v. Anderson*, 417 N.W.2d 411, 414 (Wis. Ct. App. 1987).

187. *Cf. State v. Ochoa*, 792 N.W.2d 260, 266 (Iowa 2010) (explaining that the Iowa Supreme Court’s “interpretation of article I, section 8 has quite consistently tracked with prevailing federal interpretations in deciding . . . [the nature of] seizure[s]” (quoting *Kain v. State*, 378 N.W.2d 900, 902 (Iowa 1985) (internal quotation marks omitted))).

188. *Anderson*, 417 N.W.2d at 414.

189. *See State v. Kurth*, 813 N.W.2d 270, 279 & n.3 (Iowa 2012); *State v. Crawford*, 659 N.W.2d 537, 543 (Iowa 2003); *see also supra* notes 155–61 (detailing the *Kurth* court’s consideration of a subjective requirement but ultimate adoption of an objective standard).

190. *See Dimino, supra* note 24, at 1529 (“[C]ourts should apply a standard that includes both subjective and objective elements.”); Naumann, *supra* note 25, at 365 (advocating a combined objective and subjective standard in the context of community caretaking).

191. An officer makes a stop in subjective bad faith, for example, if he claims a community caretaking purpose (i.e., providing assistance) for a stop but actually is motivated by criminal investigation purposes, such as a hunch that the subject of the seizure is involved in illicit activity. Therefore, an officer acting in subjective bad faith uses the community caretaking doctrine as “a pretext for criminal investigations.” Naumann, *supra* note 25, at 359.

192. *See Dimino, supra* note 24, at 1528 (explaining that the Supreme Court has rejected a subjective standard “in situations where the police possessed probable cause . . . [because] there could be little debate about the need for the officers to act”); Naumann, *supra* note 25, at 360 (noting that in the criminal context “probable cause provides a justification for the search” or arrest).

limitations that the different contexts place on police discretion.<sup>193</sup> For example, when an officer investigates criminal matters, he is bound by the norms of Fourth Amendment reasonableness: probable cause and reasonable suspicion.<sup>194</sup> If either exists, then the officer's actions are justified and his subjective intent, whatever it may have been, is irrelevant.<sup>195</sup> Without these norms, however, a search or seizure is simply unreasonable. Accordingly, the criminal context limits police discretion, such that an officer can only act when probable cause or reasonable suspicion are present.<sup>196</sup>

In contrast, community caretaking actions cannot be measured by probable cause or reasonable suspicion.<sup>197</sup> Something else, then, must limit officer discretion; otherwise, little prevents officers from invoking the community caretaking doctrine as a ploy for criminal investigation.<sup>198</sup> Professor Dimino argues that a consideration of subjective intent and objective reasonableness provides such a limitation: "Courts should apply the community-caretaking doctrine only where the officer reasonably believed—i.e., he subjectively held a belief that was objectively reasonable . . . —that his assistance was appropriate."<sup>199</sup> Therefore, making the state bear the burden of proof on the subjective and objective elements would deter officers from using assistance seizures as a pretext for criminal investigation.<sup>200</sup>

Additionally, requiring a subjective good faith intention is consistent with the language of the second *Anderson* element: whether "police conduct was [a] *bona fide* community caretaker activity."<sup>201</sup> The *Kurth* court addressed

---

193. Dimino, *supra* note 24, at 1530.

194. See *Whren v. United States*, 517 U.S. 806, 817, 819 (1996) (holding that probable cause is a norm of Fourth Amendment reasonableness); *supra* note 51 and accompanying text (explaining that reasonable suspicion and probable cause are only cognizable in the context of criminal investigation).

195. *Whren*, 517 U.S. at 817, 819 (holding that in the presence of probable cause, officer actions are reasonable regardless of officer intent).

196. Dimino, *supra* note 24, at 1528 (arguing that probable cause and reasonable suspicion are "discretion-limiting function[s]" for police officers).

197. See *supra* notes 105–10 and accompanying text.

198. Naumann, *supra* note 25, at 359 ("The concern over the use of the doctrine as a pretext for criminal investigations tends to be the most common objection to both the use and extension of the community caretaker doctrine.").

199. Dimino, *supra* note 24, at 1529.

200. *Id.* The government must prove that it satisfied the requirements of the Fourth Amendment. *E.g.*, *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990) (stating that when government actions are challenged, the government bears the burden of showing compliance with the Fourth Amendment); Dimino, *supra* note 24, at 1529 & n.227.

201. *State v. Anderson*, 417 N.W.2d 411, 414 (Wis. Ct. App. 1987) (emphasis added).

this point when evaluating the *Anderson* test, and noted that “bona fide” implies a subjective requirement.<sup>202</sup>

The most recurring criticism of a subjective intent requirement, however, is the difficulty of proving the state of mind of the officer who performed the seizure.<sup>203</sup> The Supreme Court has noted the costs of determining subjective intent and how application of a subjective standard, like law enforcement techniques, would “vary from place to place and from time to time.”<sup>204</sup> But, the law does not prevent courts from considering state of mind.<sup>205</sup> In addition, even the Supreme Court conceded that “[i]t is ‘more sensible’ . . . to consider an individual’s subjective ‘reasonable belief’ than to ‘frame a [n objective] test designed to combat pretext in such fashion that the court cannot take into account *actual and admitted pretext*.’”<sup>206</sup>

In actuality, a good faith subjective requirement helps explain the reasonableness of the assistance seizure in *Crawford* and the unreasonableness in *Kurth*. In *Crawford*, a host of factors led Officer Ellis to believe that Butterbaugh was in need of assistance, including the emergency call detailing Butterbaugh’s ingestion of pills and aggressive behavior, in addition to his request that a police officer take him home.<sup>207</sup> Further, the officer had reliable information that Butterbaugh “left in a dark Ford flatbed truck,” and, in effecting the stop, the officer did only the minimum “to determine whether Butterbaugh was in need of assistance.”<sup>208</sup> All of these factors indicate a subjective good faith intention. Ellis performed the stop to provide aid if necessary—not as a pretext for criminal investigation.<sup>209</sup>

To the contrary, in *Kurth*, Officer Jones would not have satisfied a requirement of subjective good faith. Jones revealed his intentions by calling in Kurth’s license plate and blocking in Kurth’s vehicle.<sup>210</sup> Based on this, the

202. *State v. Kurth*, 813 N.W.2d 270, 279 n.3 (Iowa 2012) (citing *Anderson*, 417 N.W.2d at 414) (explaining that community caretaking cannot be used as a “subterfuge” for criminal investigation, meaning that officers must have good faith intentions when invoking the doctrine).

203. *See* Naumann, *supra* note 25, at 361 (noting the difficulty of proving subjective intent, whether it be pretextual or good faith).

204. *Whren v. United States*, 517 U.S. 806, 815 (1996).

205. The criminal law addresses subjective intent on a regular basis because of the requirement of mens rea. *See* MODEL PENAL CODE § 2.02 (1985). Of the four levels of culpability, three require a consideration of the defendant’s subjective state of mind. *See id.*; *see also* Dimino, *supra* note 24, at 1535–38 (explaining that subjective intent is considered in a claim of self-defense).

206. Dimino, *supra* note 24, at 1535 (quoting *Whren*, 517 U.S. at 814).

207. *State v. Crawford*, 659 N.W.2d 537, 543 (Iowa 2003); *see also supra* notes 126–38 and accompanying text (discussing the facts of *Crawford*).

208. *Crawford*, 659 N.W.2d at 540, 543.

209. *See id.* at 543.

210. *See State v. Kurth*, 813 N.W.2d 270, 279 (Iowa 2012) (discussing the actions of Officer Jones and his compatriot as contrary to community caretaking).

court held that Jones's actions were "inconsistent with a public safety purpose but . . . certainly consistent with an investigative purpose."<sup>211</sup>

Determining an officer's subjective intent in assistance seizure cases would not overly tax the Iowa courts. The analysis in *Kurth* demonstrates that the court is able to infer the subjective intent of a police officer through his words and actions.<sup>212</sup> In addition, requiring subjective good faith preserves the integrity of the community caretaking doctrine by limiting police discretion and preventing pretextual stops.<sup>213</sup> Accordingly, the Iowa Supreme Court should amend the second element of the *Anderson* test to require that a police officer act in subjective good faith when performing an assistance seizure.

### 3. Balancing Individual and Governmental Interests

The third element of the *Anderson* test, "whether the public need and interest outweigh the intrusion upon the privacy of the individual,"<sup>214</sup> is the most important element because it encompasses the "balancing" required to derive the reasonableness of the seizure at issue.<sup>215</sup> This Subpart first discusses and rejects a modification to the third element of the *Anderson* test by the Court of Appeals of Utah in *Provo City v. Warden*.<sup>216</sup> Second, it suggests that the distinction between first- and third-party assistance seizures provides the best analytical framework for balancing the relevant interests under the third prong of the *Anderson* test.

#### a. Evaluation of *Provo City v. Warden*

In his special concurrence to the *Kurth* opinion, Justice Appel cited *Provo City v. Warden* as a possible model for evaluating assistance seizures under Iowa law.<sup>217</sup> In *Provo City*, an officer performed an assistance seizure of a moving vehicle based on a tip that its driver was going to "buy some cocaine so he could 'drive himself into a wall.'"<sup>218</sup> The officer lacked both probable cause and reasonable suspicion for the stop and claimed instead that "it was a welfare stop."<sup>219</sup> The driver, Warden, was inebriated and was

---

211. *Id.*

212. *Id.* at 279 & n.3; see also *supra* notes 155–61 and accompanying text (detailing the *Kurth* court's discussion of subjective intent).

213. See Dimino, *supra* note 24, at 1540 (stating that a totally objective test "would remove all effective constraint on arbitrary [officer] behavior").

214. *State v. Anderson*, 417 N.W.2d 411, 414 (Wis. Ct. App. 1987).

215. See *Whren v. United States*, 517 U.S. 806, 817 (1996) (holding that reasonableness is determined by balancing relevant interests).

216. *Provo City v. Warden*, 844 P.2d 360 (Utah Ct. App. 1992).

217. *Kurth*, 813 N.W.2d at 282 (Appel, J., concurring specially).

218. *Provo City*, 884 P.2d at 361.

219. *Id.* at 361–62.

later convicted of operating a vehicle while intoxicated.<sup>220</sup> In evaluating the reasonableness of the stop,<sup>221</sup> the Court of Appeals of Utah adopted the *Anderson* test.<sup>222</sup> However, the court modified the third element of the test, adopting a *Mitchell*-like limitation: “Third, based upon an objective analysis, did the circumstances demonstrate an imminent danger to life or limb?”<sup>223</sup>

The Iowa Supreme Court should dismiss the *Provo City* modification as a possible alternative. While it attempts to deal directly with assistance seizures by hybridizing the *Anderson* and *Mitchell* tests, it insufficiently resolves *Mitchell*'s shortcomings in this area.<sup>224</sup> Further, a community caretaking formulation of this nature, even one tailored to assistance seizures, is “unnecessarily—and unrealistically—narrow.”<sup>225</sup> This is because it does not require a balancing of all relevant factors—a feature embraced by Fourth Amendment doctrine<sup>226</sup> since *Terry v. Ohio*<sup>227</sup>—but considers only imminence. Therefore, adoption of the *Provo City* modification would confuse, rather than enlighten, the Iowa Supreme Court's treatment of assistance seizures.

*b. Adherence to the First- and Third-Party Distinction*

The classic third element of the *Anderson* test, with slight modification, provides the best analytical framework for determining the reasonableness of assistance seizures. For an assistance seizure to be reasonable, “the public need and interest [must] outweigh the intrusion upon the privacy of the individual.”<sup>228</sup> This correctly identifies the government's primary interest: protection of the general public.<sup>229</sup> However, because the *Anderson* test confronts assistance *seizures* (not *searches*), the relevant individual interest is not privacy, but liberty.<sup>230</sup>

220. *Id.* at 362.

221. The stop was an assistance seizure, but the Utah court did not recognize it by this title.

222. *Provo City*, 844 P.2d at 364.

223. *Id.* The court justified the modification as “detering bogus or pretextual police activities.” *Id.* at 365.

224. *See supra* Part IV.A (explaining why *Mitchell* is an inadequate test for evaluating assistance seizures).

225. *See* Matthew Bell, *Fourth Amendment Reasonableness: Why Utah Courts Should Embrace the Community Caretaking Exception to the Warrant Requirement*, 10 BOALT J. CRIM. L. 3, ¶ 34 (2005). Bell argues that a “reasonableness standard, . . . coupled with a [subjective] good faith requirement, . . . provide[s] those subject to a community caretaking [seizure] with adequate protection from abuses by police.” *Id.* ¶ 39.

226. *See id.* ¶ 36.

227. *See* *Terry v. Ohio*, 392 U.S. 1, 21 (1968).

228. *State v. Anderson*, 417 N.W.2d 411, 414 (Wis. Ct. App. 1987).

229. *See supra* notes 108–10 (discussing the governmental and individual interests that are relevant to assistance seizures).

230. *See supra* notes 108–10 and accompanying text.

To ensure that these interests balance appropriately across all potential assistance seizure contexts, the court should adhere strictly to the distinction between first- and third-party assistance searches.<sup>231</sup> Third-party assistance seizures benefit the general public—someone other than the subject of the seizure. First-party assistance seizures, on the other hand, benefit the subject of the seizure. Because the beneficiaries of first- and third-party assistance seizures are different, it is only logical that courts alter the balance of interests accordingly. Professor Dimino highlights this alteration in the context of first- and third-party assistance *searches*. However, his discussion also informs assistance seizures.<sup>232</sup>

To justify a third-party assistance seizure, the State must satisfy the first and second elements of the *Anderson* test as proposed. Third, it must show that “the public need and interest outweigh the intrusion upon the [liberty] of the individual.”<sup>233</sup> In this situation, the government interest in protecting the general public is easy to identify. If a seizure is performed to help someone other than the subject of said seizure, then some subset of society (either an individual or group) is receiving the benefit. Therefore, two aspects of the seizure in question are balanced: the benefit to the public on one side and the level of intrusion into the liberty of the subject on the other.

For illustrative purposes, imagine that police receive a reliable tip that a school bus driver, Larry, is driving to school while under the influence of alcohol.<sup>234</sup> The tip describes Larry and the vehicle he is driving in detail, and states that Larry is scheduled to drive a bus full of first graders to the local museum. After receiving the tip, an officer near the school observes a vehicle matching the description provided. The officer decides to follow the vehicle but the driver does not violate any traffic laws. Assuming that the above does not provide grounds for probable cause or reasonable suspicion, if the officer stops the vehicle, will his seizure be reasonable? This situation presents a potential third-party assistance seizure: the driver (Larry) would be the subject of the seizure, but the first graders, their teacher, their parents, et cetera, would be the beneficiaries. While a full analysis could yield various results, it is at least plausible to conclude that the government interest in protecting the children would outweigh Larry’s liberty interest.

When confronted with a first-party assistance seizure, the State must also satisfy the first and second elements of the *Anderson* test. With regard to the third element, the individual interest in liberty is unchanged. However, the government interest to be balanced is less clear.<sup>235</sup> As Professor Dimino

---

231. See *supra* Part III.A (explaining the difference between first- and third-party assistance searches).

232. See Dimino, *supra* note 24, at 1541, 1545.

233. See *Anderson*, 417 N.W.2d at 414.

234. The author refers to this scenario as the “intoxicated bus driver hypothetical.”

235. See Dimino, *supra* note 24, at 1547.

notes, courts evaluating the government interest at stake in first-party situations should operate on the following assumption: “that government may act temporarily on behalf of the individual to be protected, presuming that the individual would want to be helped until there is reason to believe the contrary.”<sup>236</sup> This assumption allows the individual to retain “sovereignty” over her privacy and liberty interests, a feature which is key to Fourth Amendment jurisprudence.<sup>237</sup> Thus, in the context of a first-party assistance *search*, an officer may perform a search to provide assistance to an individual on the presumption that the individual wants help. However, the presumption is easily rebutted by the subject of the search, who need only express that assistance is not desired.<sup>238</sup>

However well this rationale may apply in the context of first-party assistance searches, it founders when applied to first-party assistance *seizures*. Assistance seizures tend to involve moving vehicles.<sup>239</sup> When a vehicle is in motion, an officer cannot presume that the driver (the subject of the seizure) desires assistance because in order to help the driver, the officer would have to stop the vehicle. If the officer then stopped the vehicle, he would be acting contrary to the driver’s clearly expressed intent—to be in motion! *A fortiori*, the decision of the driver “to drive” rebuts the presumption of a governmental interest in providing assistance. Therefore, a first-party assistance seizure can never be reasonable.

Realistically, however, a solely first- or third-party assistance seizure is a figment of scholarship. Officers often have “mixed-motive[s]” for acting, which benefit both the subject of the seizure and the general public.<sup>240</sup> This being the case, the first- and third-party nature of a particular assistance seizure must be noted and balanced. Again, reference to the intoxicated bus driver hypothetical is useful. Imagine the same situation with a few alterations: it’s Saturday, Larry is not scheduled to work, and he is driving on deserted country roads. If the officer stopped Larry’s vehicle under these facts, it would be a first-party assistance seizure, as Larry is (arguably) the only possible beneficiary of the seizure.<sup>241</sup> Therefore, the seizure would be presumptively unreasonable.

236. *Id.*

237. *See id.*

238. *See id.* at 1549 (arguing that the government cannot continue to provide assistance if the subject of that assistance desires otherwise).

239. *See supra* Part III.B.1 (discussing the facts of *Kurth* and *Crawford*).

240. *See Dimino, supra* note 24, at 1553.

241. To push Larry’s situation even closer to a solely first-party seizure (and make the situation somewhat of an absurdity), one could stipulate that (1) Larry owns all of the property surrounding the roads on which he is driving, and (2) except for the seizing officer, there is not another person or vehicle in a fifty-mile radius of Larry’s joyriding. Under these extreme facts, Larry could (arguably) only cause damage to his own interests—not the interests of the general public. However, these stipulations seem to affirm the belief that a purely first- or third-party

*Kurth* and *Crawford* provide examples of mixed-motive assistance seizures. At first blush, both cases seem like first-party assistance seizures: the subject of the seizure is receiving the benefit. However, upon reconsideration, they are actually mixed-motive because the seizures were also performed to benefit the public by removing from the road a potentially dangerous vehicle (*Kurth*) and potentially dangerous driver (*Crawford*). This third-party assistance gives rise to the government's interest in protecting the general public. The difference in these cases, however, is the extent of the third-party assistance and, in turn, the strength of the government interest.

In *Crawford*, the government interest in protecting the public was significant because Officer Ellis had good reason to believe Butterbaugh needed help and that he was potentially dangerous to the public: Butterbaugh had ingested drugs, was acting aggressively towards others, and was potentially behind the wheel of a vehicle.<sup>242</sup> Further, before getting into the vehicle, Butterbaugh asked for the help of a police officer. By asking for help, Butterbaugh arguably rebutted the presumption (raised by the first-party aspect of the seizure in question) that he did not want help. In any event, the facts showed that the third-party characteristics of the stop outweighed the first-party characteristics, i.e., the government interest in protecting the public outweighed Butterbaugh's individual interest in liberty.

Conversely, in *Kurth*, Officer Jones knew nothing about Kurth's physical condition, only that his vehicle had struck a sign.<sup>243</sup> Further, Jones observed that Kurth's vehicle was drivable and that the damage was minimal.<sup>244</sup> He performed the seizure only after Kurth's vehicle was parked and safely removed from the public roads.<sup>245</sup> Finally, the court indicated that the discussion between Jones and his fellow officer showed that they "did not perceive any danger to public safety."<sup>246</sup> The third-party assistance characteristics of the seizure were minimal, meaning that the government interest in the stop was also minimal. Therefore, unlike *Crawford*, the government interest in *Kurth* was not weighty enough to overcome the individual interest in liberty.

In sum, the first- and third-party distinction highlights the interests to be balanced under the third prong of the *Anderson* test. The government's interest is strongest in a third-party assistance seizure, and is nonexistent in a first-party. Therefore, first-party assistance seizures are presumptively

---

assistance seizure is a figment of scholarship and not to be expected in the real world. *See supra* note 240 and accompanying text.

242. *State v. Crawford*, 659 N.W.2d 537, 543 (Iowa 2003).

243. *State v. Kurth*, 813 N.W.2d 270, 271 (Iowa 2012).

244. *Id.* at 271-72.

245. *Id.* at 272.

246. *Id.* at 279.

unreasonable. Most assistance seizures, however, are mixed-motive and have both first- and third-party characteristics. The weight of these characteristics must be balanced in order to determine the reasonableness of the assistance seizure.

## V. CONCLUSION

Assistance seizures are a narrow subset of the community caretaking doctrine, an already unique area in the realm of Fourth Amendment jurisprudence. While rare in the courtroom, assistance seizures play a much larger role in everyday life. Police officers are necessary for an orderly society and often their help is greatly appreciated. However, “help” that is forced upon an individual has the potential to do more harm than good. A careful balance must be wrought between encouraging assistance seizures and protecting the individual interest in liberty.

Because Justice Appel indicated that the Iowa Supreme Court was open to suggestions regarding the interpretation of the community caretaking doctrine under article 1, section 8 of the Iowa Constitution, a litigant in an “assistance seizure” case should not hesitate in proposing a change. The parties in *Kurth* missed a potential opportunity for interpretation under the Iowa Constitution because they failed to bring the issue before the court.<sup>247</sup>

This Note suggests that the reasonableness of assistance seizures should be based on the elements of the *Anderson* test, with two modifications: (1) the inclusion of a subjective good faith requirement; and (2) judicial notice of the distinction between first- and third-party assistance seizures when balancing governmental and individual interests. Adoption of these modifications would ensure consistent resolution of assistance seizure cases under Iowa law. The subjective good faith requirement instructs police officers to respect the division between community caretaking and criminal investigation. Finally, the first- and third-party distinction ensures that the interests to be balanced are tailored to the specifics of the situation at hand.

---

247. *Id.* at 282–83 (Appel, J., concurring specially).