

# GRANDMA GOT ARRESTED: POLICE, EXCESSIVE FORCE, AND PEOPLE WITH DEMENTIA

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## ABSTRACT

*Recent events have shone a light on the particular vulnerability of people with dementia to police violence. Police are arresting people with dementia and using excessive force to do it—drawing their firearms, deploying tasers, and breaking bones.*

*To date, little attention has been paid to the burgeoning number of people with dementia, one of society's most vulnerable populations, and their experiences with the criminal justice system. This Article examines how dementia leads people to engage in activity that appears criminal (shoplifting (forgetting to pay), and trespass (wandering), for instance) and the disproportionate response of police. In several cases where people with dementia (PWDs) have committed "crimes" as a result of their condition, police have misread confusion for defiance and used excessive force. These cases display a pattern of police conduct consistent with the "warrior model" of policing—one that undermines the relationship between police and the community, makes police see obvious symptoms of dementia as rebelliousness, and encourages the unnecessary use of force. This model is at odds with how the public sees the role of the police. These cases provide another reason that the "guardian model" of policing should be adopted instead. As with so many other instances of police brutality against marginalized and minority populations, the warrior model contributes to police violence and impedes the adoption of new ways of policing. The calls for police reform should not ignore*

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*this population, who not only deserve our particular respect but are also the among the most fragile and vulnerable.*

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## INTRODUCTION

On June 26, 2020, Karen Garner, an eighty-pound, seventy-three-year-old woman, was arrested for shoplifting.<sup>1</sup> She was holding \$13.88 worth of merchandise when she walked out of a Walmart in Loveland, Colorado, without paying.<sup>2</sup> Walmart staff stopped her and retrieved the items.<sup>3</sup> She tried to give them her credit card, but they wouldn't accept it.<sup>4</sup> She left the store empty-handed.<sup>5</sup> A store employee called Loveland police to report the incident, and Officer Austin Hopp immediately went looking for Garner.<sup>6</sup> He found her moments later, as she was walking home, picking wildflowers.<sup>7</sup> She didn't respond the way people normally would to his flashing lights, his order to stop, or his question about what happened at Walmart.<sup>8</sup> She didn't really respond at all. She just looked at him with a "confused expression" on her face.<sup>9</sup> This was enough for Officer Hopp. He grabbed her left arm, twisted it behind her back, pushed her to the ground, and handcuffed her.<sup>10</sup> A second officer, Officer Daria Jalali, arrived to assist.<sup>11</sup> Together, the officers pushed Ms. Garner against the hood of the patrol car and restrained her for a pat-down.<sup>12</sup> Officer Hopp forcibly dislocated Garner's shoulder and broke her arm in the process.<sup>13</sup> When

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1. Christine Hauser, *Arrest of Colorado Woman with Dementia Prompts Investigation*, N.Y. TIMES, <https://www.nytimes.com/2021/04/20/us/karen-garner-loveland-police-dementia.html> [<https://perma.cc/T7N2-EKJC>] (Apr. 30, 2021).

2. *Id.*

3. *Id.*

4. Amended Complaint & Jury Demand at 7, *Garner v. City of Loveland*, No. 21-CV-1035-PAB-KLM (D. Colo. Apr. 25, 2021).

5. Video surveillance reveals that after Walmart employees refused Ms. Garner's efforts to pay, they tried to block her from leaving the store. She tried to pull down an associate's mask and then walked past them. Walmart asserts that they only called police after Ms. Garner became physical in this way. See Nicole Fierro & Michael Konopasek, *Surveillance Footage Shows What Led Walmart Employees to Call Loveland Police*, FOX 31 (Apr. 20, 2021, 10:43 PM), <https://kdvr.com/news/fox31-problem-solvers-obtained-surveillance-footage-showing-what-led-walmart-employees-to-call-loveland-police/> [<https://perma.cc/4HXU-LYM8>].

6. Amended Complaint & Jury Demand, *supra* note 4, at 7.

7. *Id.*

8. *Id.* at 7–8.

9. *Id.* at 9; see 9NEWS, RAW: *Body Camera Footage Shows 73-Year-Old with Dementia Forced to Ground*, YOUTUBE (Apr. 15, 2021), <https://www.youtube.com/watch?v=y9rOW-DrRQxU> [<https://perma.cc/S9K6-6FK2>].

10. Amended Complaint & Jury Demand, *supra* note 4, at 10.

11. *Id.* at 11.

12. *Id.* at 11–13.

13. *Id.* at 12–13.

Garner collapsed in pain, Officer Jalali scolded her: “Stand up! We’re not going to hold you!”<sup>14</sup> Throughout the arrest, Ms. Garner asserted thirty-eight times that she was going home, but her protests made no difference.<sup>15</sup> A third officer arrived, Sergeant Phil Metzler, also in response to the Walmart report.<sup>16</sup> Ms. Garner was on the ground, with a dislocated shoulder, a broken arm, and Officers Hopp and Jalali on top of her holding her down.<sup>17</sup> Together, the three officers lifted Ms. Garner and maneuvered her into the back seat of the patrol car.<sup>18</sup> At the station, she sat alone in a holding cell, crying that her shoulder hurt.<sup>19</sup> It was six hours before Ms. Garner received medical attention.<sup>20</sup>

The body camera footage<sup>21</sup> is painful to watch. The whole incident—from discovering Garner to putting her into the cruiser—takes less than eight minutes, but it feels long. Garner is obviously confused from the outset and that never clears. But the officers do not slow down, they don’t stop to reassess, and they don’t ask any more questions; they seem oblivious to her anguish, even cavalier. This degree of force being used on any unarmed person, especially a senior, is horrifying. That horror is compounded by the fact that Ms. Garner has dementia.<sup>22</sup> She *could not* understand why police stopped her, why they acted the way they did, or why she was being held. She was alone, confused, and afraid. She has not been the same since.<sup>23</sup>

The violent arrest of Karen Garner drew national attention, but it is not an isolated incident. Across the country, police officers are encountering people with dementia more frequently, and respon-

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14. *Id.* at 13.

15. *Id.* at 15.

16. Hauser, *supra* note 1.

17. Amended Complaint & Jury Demand, *supra* note 4, at 18.

18. *Id.*

19. Hauser, *supra* note 1.

20. *Id.*

21. 9NEWS, *supra* note 9.

22. One aspect of Ms. Garner’s dementia is sensory aphasia, a condition which affects her ability to understand spoken, written, and symbolic communication in words and actions. It’s caused by damage to parts of the temporal lobe. See Hauser, *supra* note 1; Amended Complaint & Jury Demand, *supra* note 4, at 2, 6.

23. Austin Fleskes, *Karen Garner’s Family Speaks Out About Her Arrest by Loveland Police: ‘She Hasn’t Come Back the Way She Was Right Before’*, LOVELAND REP. HERALD, <https://www.reporterherald.com/2021/04/26/karen-garners-family-speaks-out-about-her-arrest-by-loveland-police-she-hasnt-come-back-the-way-she-was-right-before/> [https://perma.cc/F5LM-PVUG] (Apr. 29, 2021, 1:54 PM).

ding with alarming force.<sup>24</sup> We rarely hear about these encounters. Police do not publicize or even track the encounters they have with people with dementia.<sup>25</sup> Statistics do show, however, that police are arresting more elderly people than in the past,<sup>26</sup> and with higher rates of dementia among the elderly than any other group, police are *arresting* more people with dementia. The arrestees are usually released and the charges dropped when the dementia comes to light.<sup>27</sup> The stories of violence against people with dementia that we *do* hear represent a fraction of the incidents that happen.<sup>28</sup> We would likely never have heard about Ms. Garner and the Loveland police had there not been a lawsuit and the consequent release of bodycam footage.<sup>29</sup> For over a decade, there have been newspaper accounts, studies in medical journals, and committee

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24. See Justin Garcia, 'Amelia Baca Was Executed.' *Baca Family, Attorneys Demand Murder Charge in Police Killing*, LAS CRUCES SUN-NEWS, <https://www.lcsun-news.com/story/news/crime/2022/05/13/amelia-baca-family-attorneys-demand-murder-charge-police-killing/9752745002/> [<https://perma.cc/5KXX-VWGU>] (May 13, 2022, 8:01 AM); Travis Andrews, *73-Year-Old Calif. Man with Dementia Fatally Shot by Police Was Carrying Crucifix, Not Gun*, WASH. POST (Dec. 14, 2016, 5:13 AM), <https://www.washingtonpost.com/news/morning-mix/wp/2016/12/14/73-year-old-calif-man-fatally-shot-by-police-was-carrying-crucifix-not-gun/> [<https://perma.cc/9XVY-SG7C>]; *Edwards v. City of Martins Ferry*, 554 F. Supp. 2d 797, 800–01 (S.D. Ohio 2008), for examples of police using significant, even deadly force in subduing people with dementia.

25. The U.S. Department of Justice tracks police contact with the public. While it includes other demographic variables in its data, it does not include mental illness or dementia. See ERIKA HARRELL & ELIZABETH DAVIS, U.S. DEP'T OF JUST., OFF. JUST. PROGRAMS, CONTACTS BETWEEN POLICE AND THE PUBLIC, 2018 – STATISTICAL TABLES 3 (2020), <https://bjs.ojp.gov/content/pub/pdf/cbpp18st.pdf> [<https://perma.cc/V52F-MKB3>]. Similarly, trackers focused on police violence also include several demographic variables, but dementia is not one of them. See, e.g., MAPPING POLICE VIOLENCE, <https://mappingpoliceviolence.us/> [<https://perma.cc/5QQ9-KNMP>]. A recent survey of multiple efforts to plot the interactions between police and people with mental illness also does not separate out dementia. See James D. Livingston, *Contact Between Police and People with Mental Disorders: A Review of Rates*, 67 PSYCHIATRIC SERVS. 850, 850, 852 (2016).

26. See Peter C. Kratoski & Maximilian Edelbacher, *Trends in the Criminality and Victimization of the Elderly*, 80 FED. PROB. J. 58, 60 (2016).

27. See Hauser, *supra* note 1 (highlighting that the county district attorney “dismissed the misdemeanor charges against [the arrestee], noting her dementia”).

28. See Proclamation No. 10,228, 3 C.F.R. 150 (2022) (“[F]or every case of elder abuse that comes to the attention of authorities, it is estimated that [twenty-three] cases are never brought to light.”); see also Phil Gutis & Christy Turner, *Op-Ed: After a Woman With Dementia Is Assaulted By Police, A Closer Look at the Root Causes of Elder Abuse*, BEING PATIENT (June 25, 2021), <https://www.beingpatient.com/karen-garner-dementia-violent-arrest/> [<https://perma.cc/AL9B-4JLS>] (arguing that one of the root causes of elder abuse is a lack of empathy).

29. See Gutis & Turner, *supra* note 28; see also Amended Complaint & Jury Demand, *supra* note 4, at 1.

hearings warning of a growing demographic of vulnerable citizens becoming victims of police force.<sup>30</sup> It is already happening.

As our population ages, more people are developing dementia, losing the ability to fully understand the world around them and their place in it. To date, legal scholarship about people with dementia has primarily been focused on the capacity to form a contract or change a will, or their liability under tort law.<sup>31</sup> Scholars of criminal law have paid remarkably little attention to the phenomenon. This Article begins to address that omission. Over time, dementia destroys one's ability to remember, understand, assess, consider, discern, and decide. Yet these abilities are the key building blocks of *mens rea*.<sup>32</sup> Ultimately, courts and criminal law scholars will have to consider whether, and to what degree, people with dementia should be held responsible and when they should instead be excused. The rules surrounding competency and insanity will also have to be re-examined in light of what we know about dementia. Because police, in their role as first responders, are often called on to make these assessments in the field, and are also charged with protecting the vulnerable, I have chosen to examine these interactions first. In this Article, I draw attention to the victimization of people with dementia by police. The ongoing, widespread debate over police reform should not overlook these experiences. Encounters between police officers and people with dementia are unavoidable, but currently they represent a collision between policing and public health. It is essential that police develop skills and systems for recognizing and approaching people with dementia. As it stands, police forces that lack such skills and systems are not only failing in their duty to safeguard society's most vulner-

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30. See generally Madeleine Liljegren et al., *Criminal Behavior in Frontotemporal Dementia and Alzheimer Disease*, 72 JAMA NEUROLOGY 295, 295 (2015); Mario F. Mendez, *The Unique Predisposition to Criminal Violations in Frontotemporal Dementia*, 38 J. AM. ACAD. PSYCHIATRY L. 318, 318 (2010); Jeong-Min Kim et al., *Criminal Manifestations of Dementia Patients: Report from the National Forensic Hospital*, 1 DEMENTIA GERIATRIC COGNITIVE DISORDERS EXTRA 433, 433–34 (2011); *Crime Without Criminals? Seniors, Dementia, and the Aftermath: Hearing Before the S. Spec. Comm. on Aging*, 108th Cong. 1–2 (2004) (statement of Sen. John Breaux, Ranking Member, S. Spec. Comm. on Aging).

31. See generally Trevor Ryan & Wendy Bonython, *Whose Fault in an Aging World?: Comparing Dementia-Related Tort Liability in Common Law and Civil Law Jurisdictions*, 27 WASH. INT'L L.J. 407, 408–09 (2018); Edward P. Richards, *Public Policy Implications of Liability Regimes for Injuries Caused by Persons with Alzheimer's Disease* 35 GA. L. REV. 621, 622–23 (2001); Robert Abrams, *Experiential Wisdom: Insightful Perspectives on Dementia, the Legal Profession and the Law*, 89 N.Y. STATE BAR ASS'N J. 41, 41 (2017).

32. “[Law Latin ‘guilty mind’] The state of mind that the prosecution, to secure a conviction, must prove that a defendant had when committing a crime; criminal intent or recklessness . . . .” *Mens Rea*, BLACK'S LAW DICTIONARY (7th ed. 1999).

able, but they are also placing that group at even greater risk of state violence.

In Part I of this Article, I provide an introduction to dementia, its prevalence in the population, and how it affects the brain. In Part II, I discuss how dementia symptoms can lead to behaviors that appear criminal and the problematic police responses in these cases. In Part III, I discuss the role of police culture in these responses, examine the disconnect between the style of policing that is currently prevalent, and the style of policing the public requires. Finally, in Part IV, I examine possible solutions.

## I. DEMENTIA—A LOOMING CRISIS THAT IS ALREADY HERE

### A. *Dementia in the Population*

Today, approximately fifty-five million people worldwide suffer from dementia.<sup>33</sup> Researchers predict there will be seventy-eight million people suffering from dementia worldwide by 2030.<sup>34</sup> Over six million Americans suffer from Alzheimer's, and many others suffer from other forms of dementia.<sup>35</sup> Dementia afflicts roughly ten percent of adults over sixty-five,<sup>36</sup> and as many as fifty percent of those over eighty-five.<sup>37</sup> As the population ages, the number of

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33. *Dementia*, WORLD HEALTH ORG. (Sep. 20, 2022), <https://www.who.int/news-room/fact-sheets/detail/dementia> [<https://perma.cc/ZSC7-E4FP>]. *But see* Olivia Petter, *Dementia Rates are Falling in Europe and the US and Experts Credit Decline of Smoking*, THE INDEP. (Mar. 21, 2019, 12:20 PM), <https://www.independent.co.uk/life-style/dementia-decline-rates-smoking-tobacco-prevention-study-harvard-school-public-health-a8833136.html> [<https://perma.cc/58FG-LMS3>] (arguing that while the number of people may be increasing, rates of dementia are actually decreasing due to healthier lifestyles in Europe and the United States. This assertion is complicated by a number of factors, however, and does not necessarily take into account the number of people who remain undiagnosed).

34. WORLD HEALTH ORG., *supra* note 33.

35. *Alzheimer's Disease Facts and Figures*, ALZHEIMER'S ASS'N, <https://www.alz.org/alzheimers-dementia/facts-figures> [<https://perma.cc/LT2A-A3Y2>].

36. *Id.*

37. *Dementia*, CLEVELAND CLINIC, <https://my.clevelandclinic.org/health/diseases/9170-dementia> [<https://perma.cc/T7S8-LYBH>].



persons with dementia (“PWDs”)<sup>38</sup> is also on the rise, with an estimated ten million new cases annually worldwide.<sup>39</sup>

The increase in PWDs is due to several factors. First, people are simply living longer, and although it is not a normal part of aging, age is a significant risk factor for dementia.<sup>40</sup> Second, there has been an increase in the prevalence of several diseases like diabetes and heart disease, environmental factors like pollution, and lifestyle factors like stress, all of which increase the likelihood of dementia.<sup>41</sup> Third, because there is no cure for dementia, people only cease to be part of the group when they die.<sup>42</sup>

Nowadays, it seems like we all know someone affected by dementia. We are not imagining things. There are more people living with dementia today than ever,<sup>43</sup> and contrary to what some might think, the vast majority (65%) are living at home.<sup>44</sup> We know from our own experience that dementia is not the ordinary forgetfulness that comes with getting a little older. It is much more than that. Dementia robs people of their memories, their initiative, their

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38. I have chosen the term “person(s) with dementia” (abbreviated as PWD(s)) to refer to all people, diagnosed or not, who are experiencing this cognitive decline. This term is broader than “dementia patients,” which might refer only to the diagnosed, and broader than the term “dementia sufferers,” which might refer only to those who are aware of their condition and feel negatively affected by it. *See also* Richards, *supra* note 31, at 622 (using PWD as an umbrella term).

39. WORLD HEALTH ORG., *supra* note 33.

40. *Id.*

41. Kenneth M. Langa et al., *A Comparison of the Prevalence of Dementia in the United States in 2000 and 2012*, 177 JAMA INTERNAL MED. 51, 52 (2017); Ruth Peters et al., *Air Pollution and Dementia: A Systematic Review*, 70 J. ALZHEIMER'S DISEASE S145, S159–60 (2019); Mark S. Greenberg, Kaloyan Tanev, Marie-France Marin & Roger K. Pitman, *Stress, PTSD, and Dementia*, 10 ALZHEIMER'S & DEMENTIA S155, S156–59 (2014).

42. At least with respect to Alzheimer's Disease and Vascular Dementia, the two most common types of dementia, there is as yet no cure. As a result, even those who die of some other cause remain people with dementia until the end. *See* NEIL R. CARLSON, PHYSIOLOGY OF BEHAVIOR 539 (Susan Hartman et al. eds., 9th ed. 2007). In addition, it is worth noting that the mortality rates for dementia sufferers are significantly higher. Chih-Sung Liang et al., *Mortality Rates in Alzheimer's Disease and Non-Alzheimer's Dementias: A Systematic Review and Meta-Analysis*, 2 LANCET HEALTHY LONGEVITY e479, e479–80, e486–87 (2021). *See also* Nicole Rura, *Dementia Incidence Declined Every Decade for Past Thirty Years*, HARV. T.H. CHAN SCH. OF PUB. HEALTH (Aug. 14, 2020), <https://www.hsph.harvard.edu/news/press-releases/dementia-incidence-declined-every-decade-for-past-thirty-years/> [<https://perma.cc/AC9F-69KG>] (stating that even though rate of new dementia cases has declined over the past three decades, the number of people living with dementia is nonetheless expected to triple over the next thirty years due to a rapidly aging global population).

43. *See* WORLD HEALTH ORG., *supra* note 33.

44. ALZHEIMER'S ASS'N, 2022 ALZHEIMER'S DISEASE FACTS & FIGURES 67 (2022), <https://www.alz.org/media/documents/alzheimers-facts-and-figures.pdf> [<https://perma.cc/JVN7-XKQ4>].

autonomy, and their overall ability to understand the world in which they live.

As the percentage of PWDs in society increases, so does the certainty that police will come into contact with them. Whether individuals with dementia are living independently or in a care home somewhat apart from society, police will encounter them as they do any other segment of the population.

### B. *Dementia—an Overview*

Dementia is not the same thing as normal age-related cognitive decline. Normal age-related cognitive decline is usually subtle, and is mostly limited to a slowdown in thinking and difficulties in sustaining attention, holding information in mind, and multi-tasking.<sup>45</sup> With dementia, declines in cognition are much more severe and can include difficulties solving common problems and navigating and abiding by social norms.<sup>46</sup>

Dementia is not one singular disease. It is better described as a syndrome, or a cluster of symptoms that accompanies many different diseases and conditions.<sup>47</sup> Today, there are numerous recognized types of dementia associated with various diseases. These include Alzheimer's disease, Creutzfeldt-Jakob disease, Lewy body dementia, frontotemporal dementia (FTD), Huntington's disease, Parkinson's disease, vascular dementia, normal pressure hydrocephalus, posterior cortical atrophy, and Korsakoff syndrome.<sup>48</sup>

To understand how dementia occurs, a short primer on brain structure and function is helpful. The brain consists of three primary parts—a *cerebrum* which takes up most of the volume of the brain, a *cerebellum* which is located at the back of the brain, and a *brain stem* which sits at the bottom of the brain.<sup>49</sup> Each of these parts has a different function. The brain stem handles autonomic

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45. *Healthy Aging vs. Diagnosis*, U.C.S.F. WEILL INST. FOR NEUROSCIENCES, <https://memory.ucsf.edu/symptoms/healthy-aging> [<https://perma.cc/9VWR-7SY2>].

46. *Id.*

47. Seth A. Gale, Diler Acar & Kirk R. Daffner, *Dementia*, 131 AM. J. MED. 1161, 1161 (2018).

48. *See generally* NAT'L INSTS. OF HEALTH, NIH PUB. NO. 21-NS-2252, THE DEMENTIAS: HOPE THROUGH RESEARCH 4–6, 9–11, 14, 16, (2021) (providing a general overview of each type of dementia, how they are diagnosed and treated, and findings from NIH-supported research).

49. *See* G.P. PAL, NEUROANATOMY FOR MEDICAL STUDENTS 13, 15, 15 fig.3.5 (Sahil Handa & Tamali Deb eds., 2005).

activity, the cerebellum handles balance and motor function, and the cerebrum handles most of our thinking, remembering, and feeling.<sup>50</sup>

The wrinkly surface of the cerebrum is called the *cerebral cortex*. This is the brain's gray matter. The folds and wrinkles allow for billions of blood vessels and over one hundred billion nerve cells.<sup>51</sup> The nerve cells connect at more than one hundred trillion connection points called synapses.<sup>52</sup> Neurotransmitters travel across the synapses carrying tiny electrical impulses to the different nerve cells.<sup>53</sup> These impulses form the basis of our thoughts, feelings, and memories.<sup>54</sup>

Different functions of the brain reside in different sections of the brain. Scientists have mapped the cerebral cortex to determine where certain functions reside.<sup>55</sup> For instance, decision making and planning, (i.e. executive function) occur in the frontal lobe.<sup>56</sup> Additionally, short-term memories are stored in the pre-frontal cortex,<sup>57</sup> while the hippocampus plays a role in encoding long-term memories.<sup>58</sup> Depending upon which area of the brain is being

50. David G. Amaral & Peter L. Strick, *The Organization of the Central Nervous System*, in PRINCIPLES OF NEURAL SCIENCE 337, 340–42 (Eric R. Kandel et al. eds., 5th ed. 2013).

51. See Eric R. Kandel & A.J. Hudspeth, *The Brain and Behavior*, in PRINCIPLES OF NEURAL SCIENCE, *supra* note 50, at 5, 10; Eric R. Kandel, Ben A. Barres & A.J. Hudspeth, *Nerve Cells, Neural Circuitry, and Behavior*, in PRINCIPLES OF NEURAL SCIENCE, *supra* note 50, at 21, 21.

52. See Eric R. Kandel, Ben A. Barres & A.J. Hudspeth, *Nerve Cells, Neural Circuitry, and Behavior*, in PRINCIPLES OF NEURAL SCIENCE, *supra* note 50, at 21, 22 fig.2–1, 23.

53. See *id.* at 31, 32 fig.2–10, 35.

54. See Eric R. Kandel & A.J. Hudspeth, *The Brain and Behavior*, in PRINCIPLES OF NEURAL SCIENCE, *supra* note 50, at 5, 10, 21, 23.

55. See *id.* at 10; see also Shelly Fan, *Scientists Complete the Most Detailed Map of the Brain Ever*, SINGULARITY HUB (July 31, 2016), <https://singularityhub.com/2016/07/31/scientists-complete-the-most-detailed-map-of-the-brain-ever/> [<https://perma.cc/SY8Y-8WD9>].

56. Tulio M. Otero & Lauren A. Barker, *The Frontal Lobes and Executive Functioning*, in HANDBOOK OF EXECUTIVE FUNCTIONING 29, 29 (Sam Goldstein & Jack A. Naglieri eds., 2014).

57. Daniel L. Schacter & Anthony D. Wagner, *Learning and Memory*, in PRINCIPLES OF NEURAL SCIENCE, *supra* note 50, at 1441, 1442; see Antonio H. Lara & Jonathan D. Wallis, *The Role of Prefrontal Cortex in Working Memory: A Mini Review*, FRONTIERS SYS. NEUROSCIENCE, Dec. 18, 2015, at 1, 1–3.

58. It was long thought that long-term memories were stored in the hippocampus, but scientists now believe long-term memories are stored in circuits throughout the cerebral cortex. See Daniel L. Schacter & Anthony D. Wagner, *Learning and Memory*, in PRINCIPLES OF NEURAL SCIENCE, *supra* note 50, at 1441, 1458–59; Mazahir T. Hasan & John Wray, *Long-Term Memory in the Cortex: Game Changing Results: Brain Uses the Cortex for Making Sensory Associations, Not the Hippocampus*, MAX-PLANCK-GESSELLSCHAFT (Aug. 27, 2013), [https://www.mpg.de/7510372/memory\\_cortex](https://www.mpg.de/7510372/memory_cortex) [<https://perma.cc/3D6N-7LSD>].

attacked by a dementia-causing disease, the dementia can manifest very differently.<sup>59</sup>

The various dementia-causing diseases appear to work in two ways: they either disrupt the signals or kill the nerve cells. For example, in Alzheimer's disease, the most common cause of dementia,<sup>60</sup> plaques and tangles develop along the nerve cells.<sup>61</sup> Plaques disrupt neurotransmitter function and the signals travelling through the cells.<sup>62</sup> The nerves' capacity to communicate with one another is lost, and with it the ability to call up memories, think through problems, or understand one's surroundings. In contrast, vascular dementia, the second-most common form of dementia,<sup>63</sup> is caused by compromised cardiovascular health which compromises blood flow to the brain.<sup>64</sup> A reduction in blood flow by clots or through blood vessel rupture causes the brain to shrink and blood-starved sections of brain tissue to die.<sup>65</sup> This also means the death of the nerve cells and neural pathways in that brain tissue.<sup>66</sup>

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59. See generally NAT'L INSTS. OF HEALTH, *supra* note 48, at 4–5, 13–16 (describing the different types of dementia and how each affect the brain).

60. Alzheimer's is considered a neurodegenerative disease. Gale et al., *supra* note 47, at 1161, 1163. It is the number one cause of dementia in the United States. NAT'L INSTS. OF HEALTH, *supra* note 48, at 4. It accounts for 60–80% of cases. *What is Alzheimer's Disease?*, ALZHEIMER'S ASS'N, <https://www.alz.org/alzheimers-dementia/what-is-alzheimers> [<https://perma.cc/4KDQ-GBSR>]. Alzheimer's affects 5–6% of people over sixty-five and up to 30% of people over eighty-five. Gale et al., *supra* note 47, at 1163. Despite billions of dollars in research, there is currently no cure for Alzheimer's. See *id.* People die from secondary conditions caused—or worsened—by Alzheimer's effects on the brain. See Maurizio Grimaldi, *Why do People Die from Alzheimer's Disease?*, AGINGCARE, <https://www.agingcare.com/articles/why-do-people-die-from-alzheimers-disease-133297.htm> [<https://perma.cc/H7F3-6NPB>].

61. Gale et al., *supra* note 47, at 1163.

62. *What Happens to the Brain in Alzheimer's Disease?*, NAT'L INST. ON AGING (May 16, 2017), <https://www.nia.nih.gov/health/what-happens-brain-alzheimers-disease> [<https://perma.cc/8NL3-RPJW>].

63. Vascular dementia is considered a non-neurodegenerative disease. Gale et al., *supra* note 47, at 1161, 1167. It is the second leading cause of dementia after Alzheimer's. *Vascular Dementia*, JOHNS HOPKINS MED., <https://www.hopkinsmedicine.org/health/conditions-and-diseases/dementia/vascular-dementia> [<https://perma.cc/N7N7-J82S>]. Although treatment theories abound, including supplements, dietary changes and exercise, there is currently no cure for vascular dementia. *Id.* Patients likely die of other illnesses associated with the vascular condition, like stroke or heart disease, not from the effect on the brain itself. See Amos D. Korczyn, Veronika Vakhapova, & Lea T. Grinberg, *Vascular Dementia*, 322 J. NEUROLOGICAL SCI. 2, 2–3 (2012).

64. Gale et al., *supra* note 47, at 1166–67.

65. JOHNS HOPKINS MED., *supra* note 63; see also *Vascular Dementia*, ALZHEIMER'S ASS'N, <https://www.alz.org/alzheimers-dementia/what-is-dementia/types-of-dementia/vascular-dementia> [<https://perma.cc/DN8U-7NXP>].

66. JOHNS HOPKINS MED., *supra* note 61; see John C.M. Brust, *Circulation of the Brain*, in PRINCIPLES OF NEURAL SCIENCE, *supra* note 50 at 1550, 1562.

As nerve cells die, their ability to communicate and the information they hold is lost and with it the ability to remember, think, and understand.<sup>67</sup> Whether through signal disruption or nerve cell death, the effect on the brain manifests as dementia.

Dementia is progressive, usually with several stages, from very mild to very severe, during which the symptoms become progressively worse.<sup>68</sup> Even so, the course of the disease can be highly variable from person to person and dependent upon what is causing the dementia. In Alzheimer's disease, memory loss is usually one of the earliest symptoms.<sup>69</sup> Typically, short-term memory, also called working memory, is affected first.<sup>70</sup> PWDs struggle to retain new information.<sup>71</sup> They forget what was said only a few sentences before, or the events of the same morning.<sup>72</sup> Eventually, long term memory, also called crystallized memory, is also affected. PWDs begin to forget familiar people, places, and events.<sup>73</sup> They struggle to find words, or recall directions to a familiar location.<sup>74</sup> Eventually, they may even start to forget family members and events and details that have long been part of their life, like the death of a spouse or where they live.

In vascular dementia, PWDs first lose the cadre of executive function skills—initiative, planning, organization,<sup>75</sup> self-regulation, and the ability to multitask.<sup>76</sup> As a result, most PWDs with vascular dementia, even in early stages, struggle to keep track of their finances or manage other administrative tasks.<sup>77</sup> Initially,

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67. Gustavo C. Román, *Clinical Forms of Vascular Dementia*, in VASCULAR DEMENTIA: CEREBROVASCULAR MECHANISMS AND CLINICAL MANAGEMENT 7, 10, 14–15 (Robert H. Paul et al. eds., 2005).

68. *Stages of Alzheimer's*, ALZHEIMER'S ASS'N, <https://www.alz.org/alzheimers-dementia/stages> [<https://perma.cc/DEU6-2PEU>].

69. *Id.*

70. *Id.* The distinction, or lack thereof, between short-term and working memory is subject to great debate within the neurological community. See, e.g., Nelson Cowan, *What are the Differences Between Long-Term, Short-Term, and Working Memory?*, in ESSENCE OF MEMORY 2008, at 323, 333–35 (Progress in Brain Resch., Ser. No. 169, 2008).

71. See CARLSON, *supra* note 42, at 539.

72. *Dementia*, *supra* note 33.

73. NAT'L INSTS. OF HEALTH, *supra* note 48, at 4–5.

74. *Dementia*, *supra* note 33.

75. See NAT'L INSTS. OF HEALTH, *supra* note 48, at 10–12; Jorge M. Serrador, William P. Milberg & Lewis A. Lipsitz, *Cerebral Hemodynamics in the Elderly*, in VASCULAR DEMENTIA: CEREBROVASCULAR MECHANISMS AND CLINICAL MANAGEMENT, *supra* note 67, at 75, 82.

76. Román, *supra* note 67, at 14–15.

77. See NAT'L INSTS. OF HEALTH, *supra* note 48, at 10–12.

this just looks like disorganization, but it may be the first sign of a much more serious problem.

PWDs also lose the ability for complex thinking. Long conversations with multiple pieces of information may be difficult to follow. PWDs often cannot grasp travel plans or long series of commands, and they lose track of time because they cannot plan or recall what comes next.<sup>78</sup> Other symptoms of dementia include malaise, irritability, poor emotional and impulse control, confusion, and aggression.<sup>79</sup> The order and degree of impairment depends upon the area of the brain being affected as the dementia progresses.

Dementia can be hard to diagnose. Initially, the memory problems and confusion might not be evident. If the person is living and functioning in familiar surroundings, the degree of cognitive decline might not be so apparent to others. Often, people living at home do not receive a dementia diagnosis until they are moderately impaired because they are able to mask the symptoms.<sup>80</sup> If someone lives alone, it is even less likely the dementia will be detected because no one else is around to note the daily manifestations of cognitive decline. If doctors screen at the annual visit for cognitive decline, it is more likely dementia will be diagnosed, but many people do not go to the doctor regularly, and most doctors do not screen for cognitive decline unless they are aware of some early signs.<sup>81</sup> Diagnosing dementia is further complicated by the fact that the different types of dementia do not always exist in isolation. Many PWDs have mixed dementias, with both Alzheimer's disease and vascular dementia occurring simultaneously, for instance.<sup>82</sup> Furthermore, different types of dementia can manifest differently and at different times, making diagnosis in early stages even more

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78. See Román, *supra* note 67, at 14–15.

79. See NAT'L INSTS. OF HEALTH, *supra* note 48, at 2.

80. See *Dementia*, *supra* note 33.

81. Medicaid covers screening for cognitive impairment at annual doctor's visits, but medical experts stop short of recommending universal screenings on all adults sixty-five or older. See U.S. Preventive Servs. Task Force, *Screening for Cognitive Impairment in Older Adults: US Preventative Services Task Force Recommendation Statement*, 323 JAMA 757, 759 (2020) (finding that "evidence is insufficient to assess the balance of benefits and harms of screening for cognitive impairment."); see also, Judith Graham, *U.S. Medical Panel Thinks Twice About Pushing Cognitive Screening For Dementia*, KAISER HEALTH NEWS (Feb. 25, 2020, 11:30 AM), <https://khn.org/news/u-s-medical-panel-thinks-twice-about-pushing-cognitive-screening-for-dementia/> [<https://perma.cc/CA99-JLGA>] (reporting on the Task Force's findings).

82. NAT'L INSTS. OF HEALTH, *supra* note 48, at 3.

unlikely.<sup>83</sup> The result is that many people with mild to moderate dementia remain undiagnosed.

## II. DEMENTIA-RELATED BEHAVIORS AND POLICE RESPONSES

Most people with dementia, especially in early stages, are living at home,<sup>84</sup> actively participating in society, and functioning to the best of their ability. Their dementia symptoms, like short-term memory loss and inability to plan, undoubtedly make some things a struggle. Most people are keenly aware that their dementia makes them easy targets for fraudsters, for example.<sup>85</sup> But fewer people are aware that the same dementia symptoms that make them vulnerable to crime can also lead them to engage in behavior that looks criminal.

Several studies have looked specifically at the relationship between certain kinds of dementia and certain kinds of “criminal” conduct.<sup>86</sup> Since most of these do not result in charges, accounts of these “crimes” are more likely found in police logs and news reports than case law. “Criminal” activity by PWDs consists mostly of petty offenses,<sup>87</sup> though assaults do occur.<sup>88</sup> It is easy to understand how the memory loss typical in Alzheimer’s disease can lead to a PWD walking out of the store and forgetting to pay. Other conditions, like FTD, affect impulse control and judgement, so it is not surprising to see a higher proportion of assaults in that group.<sup>89</sup> There is a recognized list of crimes more typical for PWDs. They are mostly

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83. See *Dementia*, *supra* note 33 (highlighting the unclear and indistinct boundaries between different forms of dementia).

84. The Alzheimer’s Association estimates 65% of people with dementia live at home. ALZHEIMER’S ASS’N, *supra* note 44, at 67.

85. Scam artists and fraudsters frequently target the elderly, especially PWDs. From callers claiming to be from the IRS, or your computer maintenance company, to online scams requesting bail money to get “your grandson” out of jail, the average senior citizen is regularly assaulted by pleas for their hard-earned savings. Every year, over 3.5 million senior citizens are victims of financial exploitation. When they realize they’ve been swindled, police are usually the first point of contact. See Emma Rubin, *Senior Financial Scams: How Fraudsters Target Older Adults in 2021*, CONSUMER AFFAIRS, <https://www.consumeraffairs.com/finance/elderly-financial-scam-statistics.html> [https://perma.cc/6N2W-AN 6Z] (Feb. 17, 2022).

86. See, e.g., Liljegren et al., *supra* note 30, at 296; Janine Diehl-Schmid, Robert Perneczky, Julia Koch, Norbert Nedopil & Alexander Kurz, *Guilty by Suspicion? Criminal Behavior in Frontotemporal Lobar Degeneration*, 26 COGNITIVE & BEHAV. NEUROLOGY 73, 73 (2013).

87. Liljegren et al., *supra* note 30, at 296–98.

88. *Id.* at 296, 298–99.

89. *Id.* at 297–98; see Mendez, *supra* note 30, at 321.

minor offenses that fall into three general categories: traffic offenses, property offenses and offenses against persons.

**Traffic Offenses.** People with dementia pose particular risks<sup>90</sup> far beyond the concerns generally associated with seniors driving.<sup>91</sup> Driving is a complex activity. It requires reading street signs and traffic signals and an understanding of the rules of the road. The driver must remain aware of other drivers, pedestrians, and road conditions, and have quick reflexes to respond to all those variables. And, of course, the driver must keep a map in their head of the route they are taking to get to their destination.

Cognitively, the skills required for driving include memory, attention, and decision-making skills,<sup>92</sup> but all these can be highly compromised by dementia. For instance, in the early stages of dementia, crystallized memory, like knowing how to operate a vehicle or knowing what a red light means, is more likely to be preserved.<sup>93</sup> Working memory, however—the ability to retain some information while processing other information—is at higher risk of significant decline.<sup>94</sup> This makes it more likely that a PWD will get lost while driving, or be confused as to how to take another route if the planned route is blocked, or react too slowly to unexpected dangers in the road.<sup>95</sup> PWDs are more likely to drive unsafely because they cannot comprehend the traffic signs quickly enough, or because they are lost and struggling with the unfamiliarity of the place.<sup>96</sup>

Attention also has two types.<sup>97</sup> Selective attention is the ability to focus on what's important, like focusing on the traffic signals rather than the street signs or storefronts when driving.<sup>98</sup> Divided attention is the ability to focus on more than one thing at a time, like the speed you are traveling and the road conditions.<sup>99</sup> Both

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90. Megan C. Harney & Piero G. Antuono, *Driving and Dementia: A Physician's Perspective*, 6 MARQ. ELDER'S ADVISOR 135, 140–41 (2004).

91. See *Mature Drivers Survey*, KNOWLEDGE NETWORKS 3, 5 (2008), <https://www.caring.com/static/drivingsurvey.pdf> [<https://perma.cc/5HBL-HNDJ>] (referencing some of the general concerns: driving at night, in bad weather, over long distances or periods of time, and in unfamiliar places).

92. Harney & Antuono, *supra* note 90, at 141.

93. *Id.* at 142.

94. *Id.*

95. *See id.*

96. *See id.*

97. *Id.*

98. *Id.*

99. *Id.*



types of attentive ability are compromised by dementia.<sup>100</sup> Sometimes, PWDs drive the wrong way down a one-way street, fail to stop at a stop sign, or yield, or turn from a turn-only lane, because they are singularly focused on the other drivers or the road conditions and cannot also pay attention to the traffic signs.<sup>101</sup>

Decision-making skills are also required in driving. This is an executive function located in the frontal cortex that relies on input from other centers—like memory, experience, and attention.<sup>102</sup> No matter what part of the brain is affected by dementia, it is likely to impact the PWD's decision-making ability in speed, soundness, or both. So, for instance, a PWD may be unable to process all the information coming in when they merge onto a highway. They may drive too slowly as they try to get their bearings or change lanes too quickly when trying to rectify a mistake. If an accident occurs, a PWD might not process that they need to stay at the scene and call authorities. In spite of studies clearly showing the risk, most states do not require standard cognitive testing for older drivers.<sup>103</sup> PWDs are hesitant to voluntarily stop driving, and their families either cannot convince them to stop driving or overestimate their driving skills altogether.<sup>104</sup> As a result, many PWDs still have driving licenses, even after symptoms are evident.

The risk to human life in such conditions is significant. One study indicated that persons with Alzheimer's disease were involved in five times as many crashes as their healthy counterparts.<sup>105</sup> In a well-known Colorado case, an Alzheimer's patient drove her PT Cruiser onto the shoulder, striking and killing a beloved local hero.<sup>106</sup> Mary Jo Anne Thomas, sixty-two, was suffering from dementia when she struck and killed John Breaux on January 30, 2009.<sup>107</sup> Mary Jo veered off the side of U.S. 287 with her

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100. *Id.* at 141.

101. *See id.* at 141–42.

102. *See* Giacomo Rizzolatti & John F. Kalaska, *Voluntary Movement: The Parietal and Premotor Cortex*, in *PRINCIPLES OF NEURAL SCIENCE*, *supra* note 50, at 865, 884–88.

103. Harney & Antuono, *supra* note 90, at 139–40.

104. *See id.* at 138–39, 146–47; *Mature Drivers Survey*, *supra* note 91, at 19–20, 23–24.

105. Mark A. Reger et al., *The Relationship Between Neurophysical Functioning and Driving Ability in Dementia: A Meta-Analysis*, 18 *NEUROPSYCHOLOGY* 85, 85 (2004).

106. Brittany Anas, *Bond Cut for Suspect in Breaux's Death*, *BOULDER DAILY CAMERA*, Feb. 3, 2009, 2009 WLNR 2014428; Anthony Bowe & Karen Crummy, "Angel" Killed on Roadside in Lafayette, *DENVER POST*, <https://www.denverpost.com/2009/01/31/angel-killed-on-roadside-in-lafayette/> [<https://perma.cc/7ZXN-QM4W>] (May 6, 2016, 11:46 PM).

107. Anas, *supra* note 106.

vehicle, where John had been picking up trash on the roadside.<sup>108</sup> John was a cherished free spirit in Louisville, Colorado, known for his constant smile and gentle demeanor.<sup>109</sup> Mary Jo was extremely disoriented after the accident, pausing for long periods before answering questions, and struggling to remember where she lived, where she was going, and what had happened.<sup>110</sup> She initially believed *she* was the one who had been hit by a car.<sup>111</sup> Police found multiple prescription bottles in the glove compartment.<sup>112</sup> They went through a series of roadside tests to determine if she was fit to drive, and she performed poorly.<sup>113</sup> Police arrested Mary Jo and took her to a local hospital for breath<sup>114</sup> and blood tests. Given the prescription bottles and Mary Jo's own assertion that she "t[ook] too many . . . pills," police kept her in jail for several days pending the results of the toxicology tests.<sup>115</sup> When she appeared sobbing in shackles and a red, county-jail jumpsuit on February 2 in court; the results had not yet come in.<sup>116</sup> Notably, Mary Jo was subjected to all manner of insults and indignities in the news story's online comments at the time, both because the victim was the face of the community and because Mary Jo was alleged to have driven while impaired.<sup>117</sup>

Ultimately, the breathalyzer and toxicology tests determined that Mary Jo was not under the influence.<sup>118</sup> Her "spacey"

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108. Bowe & Crummy, *supra* note 106.

109. *Id.* John Breaux was considered such a hero in the town that a statue was erected in his honor. See Bill Johnson, *In Bronze, Louisville's John Breaux Rides On*, DENVER POST (Feb. 2, 2010, 2:43 PM), <https://www.denverpost.com/2010/02/02/johnson-in-bronze-louisville-john-breaux-rides-on/> [<https://perma.cc/DZ8T-LWZL>].

110. Dan Boniface, *Affidavit: Suspect in Vehicular Homicide 'Took Too Many Pills,'* 9NEWS (Feb. 2, 2009, 1:29 PM), <https://www.9news.com/article/news/local/affidavit-suspect-in-vehicular-homicide-took-too-many-pills/73-339092672> [<https://perma.cc/CA9W-4YSE>].

111. *Id.*

112. *Id.*

113. *Id.*

114. She blew a .000 on the breathalyzer. *Id.*

115. *Id.* Heath Urie, *Prosecutors Delay Charging Suspect in Breaux Death*, BOULDER DAILY CAMERA (Aug. 15, 2009, 3:36 AM), <https://dailycamera.com/2009/08/15/prosecutors-delay-charging-suspect-in-breaux-death/> [<https://perma.cc/KRK2-RYRX>].

116. Boniface, *supra* note 110.

117. Anas, *supra* note 106. Comments included criticism for driving drunk and being an addict, as well as opinions that any suggestions of dementia were a lie. See, e.g., Baileyboy, Comment to *Driver Pleads Guilty in John Breaux's Death*, BOULDER DAILY CAMERA (Aug. 15, 2009, 9:28 AM), <https://www.dailycamera.com/2009/08/15/driver-pleads-guilty-in-john-breauxs-death/> [<https://perma.cc/S84S-RMRY>].

118. Boulder Daily Camera, *No Drugs, Booze in Traffic Death*, DENVER POST, <https://denverpost.com/2009/03/04/no-drugs-booze-in-traffic-death/> [<https://perma.cc/4CVJ-7UKH>] (May 6, 2016, 11:26 PM).

behavior, and her dangerous driving, were due to her dementia.<sup>119</sup> It's not surprising police suspected intoxication; after all, Mary Jo herself asserted she took too many pills.<sup>120</sup> But it is unfortunate that police never considered dementia. Her stay in jail could not have been good for her, and whatever treatment she had been under for her condition was suspended during her time in jail.<sup>121</sup> Mary Jo's next-door neighbor, Dan Pullen, stated that Mary Jo had been diagnosed with Alzheimer's disease four years prior and had been in another car accident the previous fall.<sup>122</sup> Before this though, she had no criminal record.<sup>123</sup> Her lawyer told the judge that she suffered from a "mental defect" that affects her ability to fully grasp what's happening."<sup>124</sup> Ultimately, Mary Jo pleaded guilty to criminally negligent homicide and was sentenced to sixteen years' probation.<sup>125</sup> The judge declared it "a tragedy in every respect."<sup>126</sup>

Property Offenses. Trespass and larceny are the most common property crimes of which PWDs are accused.<sup>127</sup> Trespass occurs because PWDs wander.<sup>128</sup> Wandering is well known as a behavior associated with dementia, particularly Alzheimer's disease.<sup>129</sup> PWDs become agitated or confused about their current surroundings and leave home.<sup>130</sup> When they do, they can become lost, especially in

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119. See Anas, *supra* note 106; Boniface, *supra* note 110.

120. Boniface, *supra* note 110.

121. See Urie, *supra* note 115.

122. Boulder Daily Camera, *Boulder Wreck Raises Debate over Dementia, Driving*, DENVER POST (Feb. 14, 2009, 3:01 AM), <https://denverpost.com/2009/02/14/boulder-wreck-raises-debate-over-dementia-driving/> [<https://perma.cc/8CWC-P2ZY>].

123. Anas, *supra* note 106.

124. Boulder Daily Camera, *supra* note 118.

125. John Aguilar, *Woman Sentenced to 16 years of Probation in Breaux's Death*, BOULDER DAILY CAMERA, (Aug. 15, 2009, 12:32 PM), <https://www.dailycamera.com/2009/08/15/woman-sentenced-to-16-years-of-probation-in-breauxs-death/> [<https://perma.cc/KLS6-UEBH>]. Thomas was also ordered to pay \$13,000 in restitution, complete 200 hours of community service, and not to drive again. *Id.*

126. *Id.*

127. See Liljegren et al., *supra* note 30, at 296–300; Amy Norton, *Petty 'Crimes' Sometimes Tied to Dementia*, HEALTHDAY, <https://consumer.healthday.com/senior-citizen-information-31/misc-aging-news-10/petty-crimes-tied-to-dementia-695239.html> [<https://perma.cc/4BQY-5UZJ>] (June 1, 2022).

128. See Liljegren et al., *supra* note 30, at 298.

129. See Rob Stein, *Legal System Struggles with Dementia Patients*, WASH. POST (July 28, 2003), <https://www.washingtonpost.com/archive/politics/2003/07/28/legal-system-struggles-with-dementia-patients/abbc8ac7-e8b2-4bb2-b49b-3e41d54fc52f/> [<https://perma.cc/8N9Q-RVWQ>]; *Wandering*, ALZHEIMER'S ASS'N, <https://alz.org/help-support/caregiving/stages-behaviors/wandering> [<https://perma.cc/CU9M-EWTT>].

130. *Wandering*, *supra* note 129.

new or unfamiliar settings.<sup>131</sup> The police logs are full of reports of wanderers and the associated searches.<sup>132</sup> The short-term memory loss means wandering PWDs cannot effectively take mental note of landmarks, and making a map in their heads is not possible. They might forget where they are going or misapprehend their surroundings and wander onto private property. Depending upon the circumstance, PWDs may not even know they are on someone else's property, or if they have FTD, they may know they are on someone else's property but may be unable to control themselves.<sup>133</sup> They may even want to leave, but not understand how. In the most fortunate of circumstances, this kind of wandering proves nothing more than a minor inconvenience to the property owners, but not everyone is understanding. In 2019, Nancy Daoust, a sixty-year-old Colorado woman with advanced FTD, was cited for trespassing because she rang a neighbor's doorbell and walked away.<sup>134</sup> Police were sympathetic to her condition, but said they had no choice, citing the property owner's desire to have the law enforced on his property.<sup>135</sup> Nancy's FTD was so advanced that she had lost the power of speech, she could not speak for herself, and she could not understand the citation.<sup>136</sup> Even though she did not understand the proceeding, she still had to travel to court to answer to the charge.<sup>137</sup>

Sometimes PWDs who wander are not lost at all—they know where they're going, but they are confused about their place there. For example, they might return to their old house or neighborhood thinking they still live there. They may have no trouble getting there, traveling almost on autopilot, because the old streets and landmarks are well etched in their minds and part of their crystallized memory. Sometimes, PWDs return to familiar places out of

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131. *Id.*

132. Most times, they are found, but occasionally a tragedy occurs—many PWDs have wandered out in winter and died of hypothermia. *See, e.g.,* Amanda Garrett & Jim Mackinnon, *Memory Care Death: Richfield Police Officer Saw Footsteps Leading into Deep Snow*, AKRON BEACON J. (Jan. 28, 2022, 6:03 AM), <https://www.beaconjournal.com/story/news/2022/01/28/woman-dementia-dies-hypothermia-after-leaving-memory-care/924070002/> [<https://perma.cc/DD6S-H2PP>].

133. *See* Liljegen et al., *supra* note 30, at 299.

134. Rob Low, *Aurora Woman with Dementia Cited for Trespassing After Ringing Doorbell*, FOX31 DENVER (June 18, 2019, 6:27 PM), <https://kdvr.com/2019/06/18/aurora-woman-with-dementia-cited-for-trespassing-after-ringing-doorbell/> [<https://perma.cc/4GLA-AXKW>].

135. *Id.*

136. *Id.*

137. *Id.*

habit. Eighty-one-year-old Sam Thomas of Glendale, AZ, was acting out of habit when he kept returning to a Dunkin' coffee shop he had frequented nearly every day for the preceding six years.<sup>138</sup> Sam had a physical disability from a stroke and suffered from dementia, but he returned to the store over and over again, even after storeowners in the complex complained about Sam behaving inappropriately.<sup>139</sup> They said he stayed for hours, stared into store windows, raised his voice, and once left feces on one of the bathroom walls.<sup>140</sup> Sam's daughter, Omedia Thomas, explained her father's condition to the storeowners, provided her number, and offered to pick Sam up immediately if they called.<sup>141</sup> But on December 6, 2020, it was a good Samaritan, not a storeowner, who called to report Sam—not to complain, but out of concern.<sup>142</sup> An unidentified woman had given Sam a ride to the Dunkin', but after seeing how confused he seemed, she feared leaving him alone, so she called 911.<sup>143</sup>

The officers who responded recognized Sam; they had responded to complaints about him before.<sup>144</sup> They had even taken him home before.<sup>145</sup> The police's prior experiences with Sam didn't seem to give them any clue about his condition, and they arrested him for trespassing.<sup>146</sup> The verbal exchange between Officer Bastin and Sam during Sam's arrest was captured on the officer's bodycam:

*Officer Bastin:* Now don't fight, Sam.

*Sam Thomas:* No-o-o-o! (*clearly distressed*)

*Officer Bastin:* . . . Alright. C'mon, Sam, let's go!

*Sam Thomas:* Why? Why? (*hurried*)

*Officer Bastin:* 'Cause you're under arrest and you're goin' to jail.

*Sam Thomas:* No-o-o-o! (*clearly distressed*)

*Officer Bastin:* Yeahhh, I told you not to come back here.<sup>147</sup>

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138. Melissa Blasius, *Rethinking Policing: Family Says Glendale PD Jailed Grandpa with Dementia*, ABC15 ARIZ., <https://www.abc15.com/news/local-news/investigations/rethinking-policing/how-an-81-year-old-with-dementia-ended-up-in-a-valley-jail> [https://perma.cc/UX9N-TB6V] (May 6, 2021, 4:43 PM).

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *See id.*

146. *See id.*

147. Body-Worn Camera Recording: Sam Thomas Arrest, at 00:30–00:46 (Glendale Police 2021) (available at Blasius, *supra* note 138).

Moments later, as Officer Bastin puts Sam in the cruiser, Sam had forgotten what the Officer just told him:

*Sam Thomas:* I'm ready to go home.

*Officer Bastin:* No, you're not going home. You're going to jail. . . . I gave you a break last time.<sup>148</sup>

It seems the police's history with Sam only made the police more frustrated by his repeated behavior and utterly insensible to Sam's obvious confusion, even though his confusion was the very reason the good Samaritan called.

Despite the trauma of the arrest, it's unlikely Sam understands that he's not supposed to go back. In the spring following his arrest, Sam was cited three more times.<sup>149</sup> Police said they didn't know about Sam's dementia when they arrested him in December and were only informed after the arrest.<sup>150</sup> However, police should have known in the months that followed, but still, they showed no sign that his dementia made a difference to them. After his arrest, officers put him in a holding cell and mocked his presumed incontinence.<sup>151</sup> The officers' approaches were inconsistent from one time to the next, so Sam would not have known what to expect even if he could remember. In the end, all four of Sam's trespassing charges were dismissed after a judge found him not competent to stand trial.<sup>152</sup>

Sam's and Nancy's cases ended relatively safely. However, when police fear that the PWD is dangerous, trespass carries real risks. In 2018, eighty-seven-year-old Martha Al-Bishara was tased by police when she was cutting dandelions with a kitchen knife near the grounds of a northern Georgia Boys and Girls Clubs of America.<sup>153</sup> An employee of the Club called 911:

*Dispatcher:* Okay, and is she inside the building? Or is she outside?

*Caller:* No, she's outside; there's no kids around her, she just—she, she told me she doesn't speak English and she's walking up that trail with a knife towards me.

. . . .

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148. *Id.* at 00:47–1:00.

149. Blasius, *supra* note 138.

150. *Id.*

151. *Id.*

152. *Id.*

153. Storm Gifford, *87-Year-Old Woman with Dementia Tased by Cops*, N.Y. DAILY NEWS (Aug. 14, 2018, 6:50 PM), <https://www.nydailynews.com/news/ny-news-georgia-woman-taser-20180814-story.html> [<https://perma.cc/64TJ-BV7A>].

*Caller:* She's old, so she can't get around too well . . . Looks like she's walking around looking for something to—like—vegetation to cut down or something. She has a bag, too.

*Dispatcher:* But she came at someone with a knife, right? Or did she just have it?

*Caller:* No, she just has the knife with her on the property in her hand. She didn't try to attack anybody or anything.<sup>154</sup>

Three officers arrived soon after to confront Martha.<sup>155</sup> They ordered her to drop the knife.<sup>156</sup> They drew their firearms and pointed them at her, but she just looked at them with the same calm expression.<sup>157</sup> She maintained a calm demeanor, as though she didn't understand what the guns were.<sup>158</sup> When she didn't drop the knife, an officer tased her, sending her to the ground writhing in pain.<sup>159</sup> When her family arrived shortly thereafter, they were horrified to see her being handcuffed.<sup>160</sup> They protested that Martha had dementia and spoke no English.<sup>161</sup> Nonetheless, police arrested her and charged her with criminal trespass and obstructing an officer.<sup>162</sup> Her injuries from being tased sent her to the hospital, where she remained recuperating for several days.<sup>163</sup>

Shoplifting and larceny are among the most common crimes with which PWDs are charged. There are numerous cases of PWDs exiting stores without paying for the goods.<sup>164</sup> Sometimes, the PWD has forgotten to pay,<sup>165</sup> other times they believe they have already

154. WTVC, *Audio: 911 Call Released in Arrest of 87-Year-Old Woman in Chatsworth*, NEWS CHANNEL 9, at 00:48–01:10 (Aug. 15, 2018), <https://newschannel9.com/news/local/audio-911-call-released-in-arrest-of-87-year-old-woman-in-chatsworth> [<https://perma.cc/5K2L-9GEA>].

155. Gifford, *supra* note 152.

156. Amy B. Wang, *An 87-Year-Old Woman Carried a Knife Outside to Cut Dandelions. Police Tasered Her.*, WASH. POST (Aug. 17, 2018, 4:03 PM), <https://www.washingtonpost.com/nation/2018/08/17/an-year-old-woman-carried-knife-outside-cut-dandelions-police-tasered-her/> [<https://perma.cc/H64L-PDVP>].

157. *Id.*

158. *Id.*

159. Gifford, *supra* note 152.

160. *Id.*

161. Wang, *supra* note 156.

162. *Id.*

163. Gifford, *supra* note 152; Taylor Stewart, *Chatsworth Police Use Stun Gun on 87-Year-Old Woman Friday*, WTVC (Aug. 13, 2018), <https://newschannel9.com/news/local/elderly-woman-tased-by-chatsworth-police-on-friday> [<https://perma.cc/T89A-BEBR>].

164. See, e.g., Leigh Paterson, *The Violent Arrest of a Woman with Dementia Highlights the Lack of Police Training*, NPR: MORNING EDITION (Jun. 15, 2021, 5:00 AM), <https://www.npr.org/2021/06/15/1004827978/the-violent-arrest-of-a-woman-with-dementia-highlights-the-lack-of-police-training> [<https://perma.cc/38DM-TN8P>].

165. See Liljegren et al., *supra* note 30, at 297.

paid.<sup>166</sup> In one case, the PWD was filling her cart with items for the food bank but didn't seem to appreciate that she would have to pay for the items first in order to donate them to the food bank.<sup>167</sup> It's also plausible for a PWD to assert they were just going to get their purse or wallet from the car, while appearing oblivious to the fact that they were going out to the parking lot with a cart full of groceries for which they hadn't yet paid. Even still, there are other occasions where the PWD is confused about the ownership of some item, like an umbrella, or a coat, or even a car.<sup>168</sup> In these cases, the PWD is asserting that the item is their own, even though it belongs to someone else. There are other scenarios where the PWD has begun to steal items from co-workers<sup>169</sup> or other residents in nursing homes.<sup>170</sup> In those situations the person may think the item is their own, or they may know that they are stealing, but they are ultimately unable to control themselves.<sup>171</sup> In all these instances, it is the confusion and memory loss associated with dementia that leads to the offense. For some, the shoplifting and larceny may be the first signs of cognitive decline.<sup>172</sup> As one example, when Karen Garner was arrested, the police were called for an attempted shoplifting.<sup>173</sup>

Public exposure is also a crime with which PWDs are frequently charged. Sometimes it is related to hypersexuality, a symptom of

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166. Karen Garner's family believes she tried to use her credit card at the self-pay at the Walmart store and did not realize that the transaction did not go through, and there is no camera evidence of her simply picking up the items and walking straight out the door. Fleskes, *supra* note 23. Her willingness to pay when she was stopped, even presenting them with her credit card, could be seen as another indication that she lacked the mens rea for larceny.

167. Liljegren et al., *supra* note 30, at 297.

168. See, e.g., Patrick George, *This Elderly Couple Got Confused and Drove Home in the Wrong Car*, JALOPNIK (Jan. 6, 2013, 11:00 AM), <https://jalopnik.com/this-elderly-couple-got-confused-and-drove-home-in-the-5973470#replies> [<https://perma.cc/GM5Q-AVD4>] (discussing an elderly couple mistaking a car for their own and proceeding to accidentally drive it home). Although the article itself does not mention dementia, some of the comments to the story do, pointing out the numerous differences in the owned car and the mistaken car. See Sagarika Lumos, Comment to *id.* It seems likely in this circumstance that some cognitive impairment was involved.

169. Mario F. Mendez, *Pathological Stealing in Dementia: Poor Response to SSRI Medications*, 72 J. CLINICAL PSYCHIATRY 418, 418 (2011).

170. Ddjbfont, *Another Resident Is Stealing My Moms Things, What Can I Do to Stop Them?*, AGINGCARE: CAREGIVER FORUM (Dec. 2011), <https://www.agingcare.com/questions/senior-resident-stealing-elders-things-148773.htm> [<https://perma.cc/ZNZ6-KBGF>].

171. See Liljegren et al., *supra* note 30, at 297–98.

172. Norton, *supra* note 127.

173. Hauser, *supra* note 1.



some types of dementia, particularly behavioral variant FTD.<sup>174</sup> PWDs might expose themselves<sup>175</sup> or touch others sexually without permission.<sup>176</sup> Sometimes, though, the public exposure is a result of public urination.<sup>177</sup> There are reports of PWDs exposing themselves to children.<sup>178</sup> PWDs who have suffered some degree of loss of executive function lose the ability to think and plan ahead. This means that they may go out to walk the dog, or drive to the theatre, but forget to go to the bathroom first. When faced with the physical need to urinate, they have no choice but to do it on a roadside or behind a tree.<sup>179</sup>

In 2005, Alfred Edwards, an eighty-two-year-old Alzheimer's patient was walking through his neighborhood park when he needed to urinate.<sup>180</sup> He had the sense to go behind a tree, but some citizens, concerned that there were children around, called in to report it.<sup>181</sup> Officer Dojack responded to the call and found Alfred walking away from the park.<sup>182</sup> Richard Thomas, the owner of a shop across from the park, observed the entire interaction.<sup>183</sup> Officer Dojack exited his car, called to Alfred to stop, and demanded identification.<sup>184</sup> Alfred said that he did not have his wallet with him and that he was going home.<sup>185</sup> Alfred turned around and began to walk away.<sup>186</sup> During this time, Alfred kept saying that it was hot, and he wanted to go home.<sup>187</sup> Officer Dojack told him to "come here."<sup>188</sup>

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174. Mario F. Mendez & Jill S. Shapira, *Hypersexual Behavior in Frontotemporal Dementia: A Comparison with Early-Onset Alzheimer's Disease*, 42 ARCHIVES OF SEXUAL BEHAV. 501, 501 (2013).

175. Liljegren et al., *supra* note 30, at 298.

176. Mendez, *supra* note 30, at 320–21.

177. Liljegren et al., *supra* note 30, at 298–99; see, e.g., *Edwards v. City of Martins Ferry*, 554 F. Supp. 2d 797, 800–01 (S.D. Ohio 2008); Jason Kotowski, *Charge Against Urinating Teacher to be Dismissed if He Meets Conditions*, BAKERSFIELD (Apr. 15, 2010), [https://www.bakersfield.com/archives/charge-against-urinating-teacher-to-be-dismissed-if-he-meets-conditions/article\\_788e53ae-0072-5a9c-bbdc-82e80c635230.html](https://www.bakersfield.com/archives/charge-against-urinating-teacher-to-be-dismissed-if-he-meets-conditions/article_788e53ae-0072-5a9c-bbdc-82e80c635230.html) [https://perma.cc/3LK8-FJJ7].

178. Mendez, *supra* note 30, at 319.

179. See *Edwards*, 554 F. Supp. 2d at 800.

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

Then, the officer grabbed Alfred's arm.<sup>189</sup> Alfred pulled his arm away and put both his hands up in a "goal post" style.<sup>190</sup> That is when the officer drew his taser, pointed it at Alfred, grabbed him, slammed him on the hood of the patrol car, and tased him, saying "[T]he next fucking time I tell you to come here, you'll come here."<sup>191</sup>

Officer Siburt was a block and a half away and observed the altercation.<sup>192</sup> He pulled up to assist Officer Dojack in the arrest.<sup>193</sup> Eventually, they took Alfred to the station.<sup>194</sup> After they arrived at the station, Officer Siburt realized something was "wrong" with Alfred (i.e., that he had cognitive issues) and eventually they found his sons and called them to take Alfred home.<sup>195</sup> Like the Garner case, the Edwards case shows a violent police response to a minor violation committed by a non-cooperative subject.

Offenses Against Persons. Most tragically, because of their dementia, PWDs may commit violent offenses.<sup>196</sup> There are several reasons for this. First, in the initial stages, fear and frustration at their own waning capacity can make people angry.<sup>197</sup> Patients can become indignant and hostile at the mere suggestion there is something wrong with them.<sup>198</sup> This is a psychological response to the fear of dementia.<sup>199</sup> Second, in later stages, dementia physically

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189. *Id.*

190. *Id.*

191. *Id.* at 800–01.

192. *Id.* at 801.

193. *Id.*

194. *See id.*

195. *See id.*

196. Adonis Sfera, Carolina Osorio, Roberto Gradini & Amy Price, *Neurodegeneration Behind Bars: From Molecules to Jurisprudence*, FRONTIERS PSYCHIATRY, Aug. 2014, at 1, 2–3. *See also* Hui-Yi Wang et al., *Forensic Evaluations for Offenders With Dementia in Taiwan's Criminal Courts*, 46 J. AM. ACAD. PSYCHIATRY L. 45, 46, 48 (2018); Gabriele Cipriani, Claudio Lucetti, Sabrina Danti, Cecilia Carlesi, & Angelo Nuti, *Violent and Criminal Manifestations in Dementia Patients*, 16 GERIATRIC GERONTOLOGY INT'L 541, 543 (2016); Stephen Dinniss, *Violent Crime in an Elderly Demented Patient*, 14 INT'L J. GERIATRIC PSYCHIATRY 889, 889, 891 (1999); Ellen Haller, Renee L. Binder & Dale E. McNiel, *Violence in Geriatric Patients with Dementia*, 17 J. AM. ACAD. PSYCHIATRY & L. 183, 183 (1989).

197. Lawrence Robinson & Melinda Smith, *Coping with an Alzheimer's or Dementia Diagnosis*, HELPGUIDE (Oct. 7, 2022), <https://www.helpguide.org/articles/alzheimers-dementia-aging/coping-with-an-alzheimers-or-dementia-diagnosis.html> [https://perma.cc/T7M5-F4Y4].

198. Lisa Brousseau, *When the Person with Dementia Doesn't Know They Have Limitations – Anosognosia*, SINAI HEALTH (Jan. 28, 2020), <https://www.dementiacarers.ca/when-the-person-with-dementia-doesnt-know-they-have-limitations-anosognosia/> [https://perma.cc/263Z-523A].

199. *See* Robinson & Smith, *supra* note 197.

consumes the brain, eroding self-control.<sup>200</sup> Their frontal lobe, which controls inhibition and judgment, has been eaten away by the disease. This means that even in situations where the person would have previously held back, they would be more likely to lash out.<sup>201</sup> Third, like other cognitive impairments, dementia can easily lead to the misapprehension of social cues.<sup>202</sup> Combined with paranoia, this may lead the patient to feel confused and threatened even where no threat exists.<sup>203</sup> They may respond defensively with violence. Finally, as patients lose their memory, they may become aggressive because they do not recognize the person in front of them, or the place they are in, and they consequently feel afraid.<sup>204</sup>

It is not uncommon for PWDs to attack their spouses, caregivers, or fellow nursing home residents.<sup>205</sup> Police are regularly summoned to restrain or subdue PWDs whom the caregiver cannot handle.<sup>206</sup> This has unintended results. A wife, calling for assistance in response to her belligerent husband diagnosed with dementia, does not usually want him to be arrested, but she calls the police because she does not know whom else to call.<sup>207</sup> Deb Mulligan called 911 when her fifty-nine-year-old husband, Brian—who had been recently diagnosed with Pick’s disease (a rare form of dementia)—threatened her life.<sup>208</sup> Brian Mulligan was arrested and held in jail for eighteen days before being transferred to a

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200. See Cipriani et al., *supra* note 196, at 545.

201. Rob Stein, *Legal System Struggles with Dementia Patients*, WASH. POST (July 28, 2003), <https://www.washingtonpost.com/archive/politics/2003/07/28/legal-system-struggles-with-dementia-patients/abbc8ac7-e8b2-4bb2-b49b-3e41d54fc52f/> [https://perma.cc/K89N-UUPB].

202. Cipriani et al., *supra* note 196, at 543.

203. *Id.*

204. Andre Picard, *We Don't Need Grandpa Prisons, We Need a Dementia Strategy*, THE GLOBE & MAIL, (Oct. 13, 2010), <https://www.theglobeandmail.com/life/health-and-fitness/we-dont-need-grandpa-prisons-we-need-a-dementia-strategy/article4328958/> [https://perma.cc/GFE5-L6RZ].

205. See Mark E. Kunik et al., *Consequences of Aggressive Behavior in Patients with Dementia*, 22 J. NEUROPSYCHIATRY CLINICAL NEUROSCIENCES 40, 40 (2010).

206. “Doesn’t Feel Right:” *Elderly Patients with Dementia Handcuffed After Caregivers Call 911*, FOX6 MILWAUKEE (Nov. 16, 2016), <https://www.fox6now.com/news/doesnt-feel-right-elderly-patients-with-dementia-handcuffed-after-caregivers-call-911> [https://perma.cc/6Z4E-8ZZV]; see, e.g., Mark Lachs, Ronet Bachman, Christianna S. Williams & John R. O’Leary, *Resident-to-Resident Elder Mistreatment and Police Contact in Nursing Homes: Findings from a Population-Based Cohort*, 55 J. AM. GERIATRIC SOC’Y 840, 843 (2007).

207. See The Canadian Press, *Strategy Urged for Police Calls Involving Alzheimer’s Patients*, CTV NEWS, (Jul. 8, 2012, 11:09 PM), <https://www.ctvnews.ca/canada/strategy-urged-for-police-calls-involving-alzheimer-s-patients-1.870280> [https://perma.cc/R99K-AWES].

208. *Id.*

psychiatric facility.<sup>209</sup> In such cases, the handcuffing and arrest can have serious negative effects.<sup>210</sup> The experience is traumatic and unfamiliar, and can precipitate a deterioration in their condition.<sup>211</sup> Despite the police likely having less training than the caregiver in dealing with dementia, they are still the ones called. And, unfortunately, even when police are aware of the person's condition, they employ the same tools they use to restrain alleged criminals.

### III. WHY DO POLICE RESPOND THIS WAY?

The incidents recounted here suggest that police often respond with unnecessary force when they encounter a PWD. When questioned, officers maintain either that they didn't know the person had dementia,<sup>212</sup> or that they had no alternative given the circumstances, even when they knew about the person's cognitive condition.<sup>213</sup> Both responses are troubling, especially when video footage clearly show very confused subjects,<sup>214</sup> and there are readily apparent alternatives to the actions police took.

More often than not, we presume that if police recognized the subject was a PWD, they would act differently; police themselves even assert this.<sup>215</sup> Unfortunately, officers frequently do not recognize the subject has dementia.<sup>216</sup> There are occasions where the

209. *Id.*

210. *Id.*

211. Stuart Woledge, *Police Restrain Alzheimer's Sufferer, 76, with Handcuffs like 'A Common Criminal' in Care Home*, DAILY MAIL, (Sep. 20, 2013, 12:32 PM), <https://www.dailymail.co.uk/news/article-2426862/Police-restrain-Alzheimers-sufferer-76-handcuffs-like-common-criminal-care-home.html> [<https://perma.cc/6T82-ECX8>].

212. Consider Sam Thomas, the Dunkin' trespasser. Police asserted they did not know of Sam's condition until December 2020, even though they had spoken with Sam, his daughter, and storeowners before and had responded to several trespassing complaints in the past. The police spokesman stated that, now that they knew, they would seek alternatives. See *supra* notes 138–52 and accompanying text.

213. In the same case, the police spokesman defended police action, saying: "We still have laws that we have to maintain. In these cases, we have victims." Blasius, *supra* note 138.

214. Consider the video footage of the arrests of Karen Garner, Sam Thomas, and Martha Al-Bishara. 9NEWS, *supra* note 9; Blasius, *supra* note 138; 11Alive, *Body Camera Shows 87-Year-Old Woman Tased - Full Video*, YOUTUBE (Jul. 3, 2019), <https://www.youtube.com/watch?v=sE8XmHAP4j4> [<https://perma.cc/D8G5-TB6E>]. In all three, the elderly arrestees display complete confusion and distress.

215. See, e.g., Blasius, *supra* note 138.

216. Consider the Edwards case, where it took a second officer, after the initial altercation with police officers had subsided, to notice that Edwards had a cognitive impairment. *Edwards v. City of Martins Ferry*, 554 F. Supp.2d 797, 801 (S.D. Ohio 2008); see also Fei

symptoms are not evident, and the person is functioning well in the particular circumstance. Because dementia does not present the same way in every person, and might not even present the same in the same person at different times, it can be difficult to tell when someone has dementia.<sup>217</sup> Depending on the area of the brain affected, and the skills required at the particular moment, a PWD might not appear impaired at all. For instance, the complex cognitive skills required to do arithmetic are not required to sit and have a conversation about the weather. Similarly, a police officer might easily spot the cognitive deficiencies when a PWD is driving but not detect them during a traffic stop. This can have tragic results. When Alzheimer's patient Ralph Thompson was driving erratically in Washington, D.C., a police officer pulled him over.<sup>218</sup> Ralph, however, seemed perfectly coherent in their traffic-stop conversation, so the officer let him go.<sup>219</sup> That afternoon, Ralph was reported to D.C. police as a missing Alzheimer's patient.<sup>220</sup> Eight hours after the traffic stop, Ralph was still out driving, now about seventy miles from D.C.<sup>221</sup> His car swerved across the median, colliding with two tractor-trailers.<sup>222</sup> Ralph was killed in the accident.<sup>223</sup> Had the officer suspected dementia and asked the right questions during the traffic stop, he might have been able to prevent Ralph's death.

PWDs who do not already have a diagnosis can be even more undetectable. A PWD who has an established routine and is living at home is better positioned to adequately cope, thus masking their

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Sun, Xiang Gao, Hillary Brown & L. Thomas Winfree Jr., *Police Officer Competence in Handling Alzheimer's Cases: The Roles of AD Knowledge, Beliefs, and Exposure*, 18 *DEMENTIA* 674, 674 (2019) (discussing research on police officer competence as it relates to interactions with PWDs).

217. For example, the familiar "sundowner's syndrome", also called late-day confusion, is characterized by increased confusion, anxiety, and disorientation that starts in the late afternoon in memory loss patients. See Rachel Nall, *What to Know About Sundowner's Syndrome?*, *MED. NEWS TODAY* (June 29, 2021), <https://www.medicalnewstoday.com/articles/314685#takeaway> [<https://perma.cc/9KWY-RAJ5>].

218. David A. Fahrenthold, *Police Often Stymied by Ailing 'Wanderers'*, *WASH. POST* (Dec. 9, 2000), <https://www.washingtonpost.com/archive/local/2000/12/09/police-often-stymied-by-ailing-wanderers/c2f372d3-7038-4660-a349-d027721fa3aa/> [<https://perma.cc/EZ8P-MKPV>].

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

impairment and evading diagnosis.<sup>224</sup> PWDs living alone evade diagnosis because they have no one around to notice the decline in their memory or reasoning. Intimates who know a person well are the most likely to notice when something is wrong.<sup>225</sup> What appears normal to a stranger may actually be very impaired relative to a person's usual capacity, and intimates are in the best position to notice the difference from that baseline. Because of this, even an officer who has experience with dementia in their own family can have trouble recognizing it in a stranger.<sup>226</sup> Unusual events and unfamiliar surroundings can act like a "stress-test for the brain" revealing the cognitive deficiencies, but sometimes "criminal" behavior is the first sign something is wrong.<sup>227</sup> In such cases, there may be no one to blame; it is understandable that police may fail to spot dementia in cases where it is truly difficult to discern.

It is police behavior in other cases, though, that is concerning, when the dementia is evident—even florid—and police insist that they could not see it, though any reasonable observer would. What prevents officers from recognizing those symptoms, and that vulnerability, in cases where the person's condition should be obvious? The real problem may be police culture. National surveys illuminate the disturbing views held by police officers about who they are and what they do.<sup>228</sup> Police feel disillusioned with their work, unappreciated by the public, and alone in facing the challenges of policing.<sup>229</sup> They express dissatisfaction at the large proportion of their job that is spent doing social work type tasks, indicating that it is not "real police work."<sup>230</sup> They also report that the stress of working at a job that feels so dangerous every day takes a

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224. Linda Lang et al., *Prevalence and Determinants of Undetected Dementia in the Community: A Systematic Literature Review and a Meta-Analysis*, *BMJ OPEN*, Feb. 3, 2017, at 1, 5.

225. *Early Diagnosis of Dementia*, *DEMENTIA AUSTL.*, <https://www.dementia.org.au/info/formation/diagnosing-dementia/early-diagnosis-of-dementia> [<https://perma.cc/LBW5-F24U>].

226. Sun et al., *supra* note 216, at 679–81.

227. Madeleine Liljegren et al., *Association of Neuropathologically Confirmed Frontotemporal Dementia and Alzheimer Disease with Criminal and Socially Inappropriate Behavior in a Swedish Cohort*, *JAMA NETWORK OPEN*, Mar. 29, 2019, at 1, 2.

228. RICH MORIN, KIM PARKER, RENEE STEPLER & ANDREW MERCER, PEW RSCH. CTR., *BEHIND THE BADGE: AMID PROTESTS AND CALLS FOR REFORM, HOW POLICE VIEW THEIR JOBS, KEY ISSUES AND RECENT FATAL ENCOUNTERS BETWEEN BLACKS AND POLICE 23* (2017), [https://www.pewresearch.org/social-trends/wp-content/uploads/sites/3/2017/01/Police-Report\\_FINAL\\_web.pdf](https://www.pewresearch.org/social-trends/wp-content/uploads/sites/3/2017/01/Police-Report_FINAL_web.pdf) [<https://perma.cc/W85C-FCKS>].

229. *Id.* at 5.

230. *See id.* at 8, 80; Peter C. Kratcoski & Susan B. Noonan, *An Assessment of Police Officers' Acceptance of Community Policing*, in *ISSUES IN COMMUNITY POLICING* 169, 169–70, 183–84 (Peter C. Kratcoski et al. eds., 1995).

significant toll on their happiness and personal relationships.<sup>231</sup> While not every individual officer holds these views, the prevailing trend reveals a deep disconnect between how the citizenry and police view the role and responsibilities of police. Many citizens have a notion of the police role that places a significant emphasis on an officer being a community member, problem solver, and social healer.<sup>232</sup> This idealistic view of the kind police officer who helps lost children find their way home and rescues kittens from trees is out of step with the way police conceive of themselves and their jobs, which falls primarily in the “intrepid superhero crime fighter” model.<sup>233</sup>

Much has been written over the decades about police culture. In 1968, James Q. Wilson, based on his empirical study, answered two important questions: (1) what functions American police have in society, and (2) how American police accomplish those functions.<sup>234</sup> Wilson found that there were three main styles of policing: watchman, legalistic, and service.<sup>235</sup> The watchman style of policing stresses maintaining order.<sup>236</sup> This means that more attention is given to controlling social disorder in the community.<sup>237</sup> These officers are deeply involved in their community, and extend their involvement to activities that disrupt the social order, even when they are not illegal.<sup>238</sup> The legalistic style of policing is more bureaucratic and emphasizes impartiality and professionalism to ensure strict law enforcement.<sup>239</sup> These officers may have high arrest rates or issue large numbers of tickets.<sup>240</sup> In contrast, the service style of policing emphasizes community resident satisfaction.<sup>241</sup> They take both order maintenance and law enforcement seriously

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231. *Id.* at 8, 19.

232. *See id.* at 77–78; JAMES Q. WILSON, VARIETIES OF POLICE BEHAVIOR: THE MANAGEMENT OF LAW AND ORDER IN EIGHT COMMUNITIES 249–52 (1971 ed. 1968).

233. These idealistic functions of police were omitted from Wilson’s study on police behavior—despite accounting for a majority of police radio calls at the time—because “unlike the law enforcement functions, they are intended to please the client and no one else.” *Id.* at 4–6.

234. *Id.* at 4.

235. *See generally id.* at 140, 172, 200 (discussing each policing style).

236. *Id.* at 140.

237. *Id.*

238. *See id.* at 140–45, 147–48.

239. *Id.* at 172.

240. *Id.*

241. *Id.* at 200, 205–07.

because their primary goal is a good relationship with the community.<sup>242</sup>

While Wilson's work remains pivotal, recently, greater attention has been paid specifically to American police culture and its role in perpetuating police violence, particularly against certain racial minorities.<sup>243</sup> There is a now a widespread recognition among both traditionalists and reformists that American police have largely adopted a new model, the warrior mindset.<sup>244</sup> This has far-reaching effects on police interactions with the community members they are supposed to serve. Under the warrior style of policing, officers prioritize crime-fighting as their primary mission and see themselves as soldiers in a life-or-death battle against crime and criminals.<sup>245</sup> Scholars recognize four primary areas of police beliefs and assumptions about police work: (1) danger and risk, (2) authority and the use of force, (3) solidarity and isolation, and (4) power and masculinity.<sup>246</sup> These beliefs and assumptions form the foundation for this style of policing. Under the warrior style of policing, police are taught that they are constantly in danger, perpetually at risk.<sup>247</sup> Any situation can turn deadly at any time, so they must be vigilant, cautious, and ready to use force if they want to survive their shift.<sup>248</sup> As a result, police respond to each call predisposed to see it as a potentially deadly situation. While it is true that policing is a dangerous job, the data does not match with the primary emphasis being placed on the danger.<sup>249</sup> Policing is not *the* most

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242. *Id.*

243. German Lopez, *American Policing is Broken: Here's How to Fix it.*, VOX, 2017, <https://www.vox.com/policy-and-politics/2016/11/29/12989428/police-shooting-race-crime> [<https://perma.cc/6MXC-QQRE>]; see MORIN ET AL., *supra* note 228 at 4.

244. RADLEY BALKO, *RISE OF THE WARRIOR COP: THE MILITARIZATION OF AMERICA'S POLICE FORCES* xi–xii (paperback reprint 2021); Seth Stoughton, *Law Enforcement's "Warrior" Problem*, 128 HARV. L. REV. F. 225, 225 (2015); Kyle McLean, Scott E. Wolfe, Jeff Rojek, Geoffrey P. Alpert & Michael R. Smith, *Police Officers as Warriors or Guardians: Empirical Reality or Intriguing Rhetoric?*, 37 JUST. Q. 1096, 1097 (2020); SUE RAHR & STEPHEN K. RICE, HARV. KENNEDY SCH. & NAT'L INST. OF JUST., NCJ No. 248654, *FROM WARRIORS TO GUARDIANS: RECOMMITTING AMERICAN POLICE CULTURE TO DEMOCRATIC IDEALS* 1–2 (2015).

245. Stoughton, *supra* note 244 at 226–27.

246. Jace Valcore, *Police Culture Now, But not Forever*, MEDIUM: THE NEW LEADER (May 17, 2018), <https://medium.com/the-new-leader/police-culture-now-but-not-forever-10e4e0f903fc> [<https://perma.cc/294D-ANXT>].

247. Stoughton, *supra* note 244, at 227–28.

248. *Id.* at 226–27.

249. *See 25 Most Dangerous Jobs*, UNIV. OF DEL.: FACILITIES, REAL ESTATE & AUXILIARY SERVS. (Dec. 14, 2020), <https://www.facilities.udel.edu/safety/4689/> [<https://perma.cc/6JKP-5K2A>] (explaining that police officers have a fatality rate only 4.1 times the average nationwide workplace fatality rate); MORIN ET AL., *supra* note 228, at 23, 26–27.



dangerous job; in fact, it ranks twenty-two out of the twenty-five most dangerous jobs.<sup>250</sup> Seventy percent of officers will retire without ever firing their service weapons, but police spend much more time on firearms training than on de-escalation tactics or problem-solving.<sup>251</sup> The result is that police are hypervigilant about crime, but also about non-crime as potential crime. In addition to hypervigilance, this training contributes to a siege mentality, where police cannot trust the public they serve, because any interaction has the potential to be fatal.<sup>252</sup> This results in an “us versus them” posture, which lessens the compassion officers show toward civilians overall.<sup>253</sup>

Police are also attuned, through daily contact and through training, to the overall chaos of society.<sup>254</sup> They might feel that their work as crime fighters is the only thing keeping the world from slipping into anarchy. Their task is nothing less than preserving world order. In this context, every failure to comply with a police order is a direct affront to their authority and foretells a willingness on the part of the subject to use force. Reasserting police control in the face of this defiance might require force, even excessive force, but they are ready to wield it.<sup>255</sup>

Police also hold the belief that they are alone in this task, that the public neither understands nor appreciates what they do.<sup>256</sup> This supports cohesion among police officers, but on the flip side it also separates police from the community, contributing further to the “us versus them” mindset. Solidarity among police helps explain the culture of silence around police misconduct and the “thin blue line” that encourages protecting fellow officers from scrutiny or critique.<sup>257</sup>

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250. *25 Most Dangerous Jobs*, *supra* note 249.

251. Valcore, *supra* note 246.

252. Zack Beauchamp, *What the Police Really Believe: Inside the Distinctive, Largely Unknown Ideology of American Policing — and how it Justifies Racist Violence.*, VOX (Jul. 7, 2020, 8:10 AM) <https://www.vox.com/policy-and-politics/2020/7/7/21293259/police-racism-violence-ideology-george-floyd> [<https://perma.cc/JP7A-6UUR>].

253. See RAHR & RICE, *supra* note 244, at 4–5; see also BALKO, *supra* note 244, at 127 (describing how police practices that took hold during the War on Drugs were framed as a “struggle between good and evil”).

254. Beauchamp, *supra* note 252.

255. See *id.*

256. MORIN ET AL., *supra* note 228, at 27–29, 78–79.

257. Beauchamp, *supra* note 252.

When we view the encounters with PWDs with these police beliefs and assumptions in mind, it is easier to see why they misconstrue symptoms as threats, even to the extent of dismissing their own common-sense instincts. In the arrest of Ms. Garner, when Officer Hopp arrived on the scene, he was responding to a report of a possible crime, attempted shoplifting.<sup>258</sup> He saw Ms. Garner's failure to comply with his directions as hostility and aggression, not confusion. He then treated her as he might any person resisting his authority, old or young. She could not be trusted, her quizzical look might have been a ruse, and she might have been dangerous. Officer Hopp didn't see her as a frail, elderly woman who did not understand him, he saw her as another citizen who would not obey him. There is no doubt that Officer Hopp's actions were excessive,<sup>259</sup> and, we would hope, specific to him,<sup>260</sup> but the fact that three officers responded to a call of an attempted shoplifting by a petite, elderly woman shows hyper-enforcement in response to a non-crime, which should only be deployed, if at all, in response to real crime.

Other encounters show a similar pattern. In the arrest of Martha Al-Bishara, three officers respond to a call of a non-English speaking elderly woman, who "can't get around too well" cutting dandelions in a wooded area with a kitchen knife.<sup>261</sup> Even after they point their guns and a taser at her, Martha does not comply with their orders to drop the knife, but instead looks at them with a pleasant smile and a completely calm demeanor.<sup>262</sup> Her reaction is not normal. Being unconcerned and docile (i.e., underreacting) when faced with a drawn firearm, is as much evidence of dementia as being belligerent and hostile (i.e., overreacting) when the situation does not call for it. But the officers view her conduct as though it is closer to the latter than the former. They do not read her

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258. Hauser, *supra* note 1.

259. Officer Hopp was recently sentenced for his part in the arrest. See Jaclyn Peiser, *Ex-Officer Sentenced to 5 Years for Violent Arrest of 73-Year-Old Woman*, WASH. POST (May 6, 2022, 7:26 AM), <https://www.washingtonpost.com/nation/2022/05/06/austin-hopp-karen-garner-sentenced/> [<https://perma.cc/W5UB-3B8N>].

260. Notably, Officer Jalali was also sentenced recently for her role in the Garner arrest. See Sady Swanson, *Ex-Loveland Officer Daria Jalali Sentenced to Jail over Karen Garner Arrest*, FORT COLLINS COLORADOAN, <https://www.coloradoan.com/story/news/2022/08/05/loveland-police-officer-daria-jalali-sentenced-jail-karen-garner-case/65391087007/> [<https://perma.cc/WT32-TUS6>] (Aug. 8, 2022, 11:40 AM).

261. Wang, *supra* note 156; WTVC, *supra* note 154.

262. Keith Allen, *Police Use Taser on 87-Year-Old Woman Cutting Dandelions with a Knife*, CNN, <https://www.cnn.com/2018/08/16/us/georgia-police-taser-woman-dandelions-knife/index.html> [<https://perma.cc/2BYE-Y3XP>] (Aug. 17, 2018, 1:47 PM).

reaction as confusion; instead, they see it as defiance. And afterwards, the officers display little sympathy for her, simply stating “I get it, but you can’t have a knife.”<sup>263</sup> In response to public criticism afterwards, Chief of Police Josh Etheridge, one of the officers who’d responded, continued to defend use of the taser to local media outlets and characterized it as a circumstance that could have turned deadly at any moment:

“And I know everyone is going to say: ‘An 87-year-old woman? How big a threat can she be?’” Chief Etheridge told *The Daily Citizen-News of Dalton* on Monday. “She still had a knife.”

...  
 “Why did we [t]ase an 87-year-old woman?” he added. “I guess in that circumstance, I am glad I was there and saw it firsthand and understand why it occurred. An 87-year-old woman with a knife still has the ability to hurt an officer.”<sup>264</sup>

We heard a similar response in the Karen Garner arrest from supervising officer Phil Metzler, when he chastised a concerned bystander immediately following the arrest:

“So, I would caution you . . . that you stay a little further back, because had this turned into a violent encounter, or she had pulled a gun, you and your family would have been in the mix, okay, because you put them there . . . So you have a complete lack of trust of police because you watch the news, I understand that.”<sup>265</sup>

Both these statements seem to confirm that police do not feel the public understands their job or supports them. Also, in both cases, the supervising officer defended the use of force, even saying that the other officers did nothing wrong, despite the excessive force that was used.<sup>266</sup> This demonstrates the solidarity and isolation that police feel, consistent with the warrior model of policing.

263. 11Alive, *supra* note 214.

264. Christine Hauser, *Georgia Police Dept. Defends Use of Taser on 87-Year-Old Woman*, N.Y. TIMES, (Aug. 17, 2018), <https://www.nytimes.com/2018/08/17/us/woman-taser-georgia-cops.html> [<https://perma.cc/LBL2-4BVL>].

265. Sarah Schielke - The Life & Liberty Law Office, *Karen Garner Case - Sgt. Metzler Gaslighting Concerned Citizen - The Video He Tried to Hide*, YOUTUBE (Sept. 7, 2021), [https://www.youtube.com/watch?v=\\_T-YbossmP0](https://www.youtube.com/watch?v=_T-YbossmP0) [<https://perma.cc/X9RX-GPY7>].

266. Hauser, *supra* note 264. And further, the fact that in the Garner case, Sergeant Phil Metzler, the supervising officer, signed off on Hopp’s use of force in his report of the arrest claiming that Garner had suffered no injury. Amended Complaint & Jury Demand, *supra* note 4, at 27–28.

Even if police read a failure to comply as confusion, they likely see the complicating factor as intoxication or mental illness.<sup>267</sup> Both intoxicated persons and the mentally ill are perceived as more dangerous,<sup>268</sup> even though the facts do not necessarily indicate that these persons are, in fact, more dangerous.<sup>269</sup> This makes it very difficult for police to assess the confusion of subjects with cognitive decline appropriately. It is easier for police to presume the known thing which with they have experience—mental illness or drug use—than to slow down and ask questions to determine if the person has dementia.

Current police culture is closely tied to recruitment and popular imagery of the role of police. If—as research seems to indicate—police officers do not see their social-work-type duties as real police work, then those duties—which in fact take up the majority of their time—lead to disillusionment and poor police morale, especially among those who see the job as primarily crime fighting. Given that a fair amount of recruitment comes from veteran populations,<sup>270</sup> it makes sense that they enter the force with a particular view of their role, the risks, and the tools at their disposal. This helps to explain why, even in those cases where police are alerted to the subject's condition, they prioritize law enforcement, a kind

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267. Some argue that PWDs also represent people with mental illness. While both involve issues with the brain that affect behavior, I would contend that there are several significant differences. First, dementia tends to result in novel criminality, after a lifetime of law-abiding behavior. Dawn Miller, *Sentencing Elderly Criminal Offenders*, 7 NAELA J. 221, 225 (2011). Second, dementia is mostly limited to persons of advanced age (as cases of early onset dementia are relatively rare). In the vast majority of cases of people with cognitive decline, the decline begins after age sixty-five (usually after age seventy). Mayo Clinic Staff, *Young-Onset Alzheimer's: When Symptoms Begin Before Age 65*, MAYO CLINIC (Apr. 29, 2022), <https://www.mayoclinic.org/diseases-conditions/alzheimers-disease/in-depth/alzheimers/art-20048356> [<https://perma.cc/TS56-U8YQ>]. Next, given their advanced age, most PWDs are less likely to pose a significant physical danger against an officer. In truth, isn't that why we are distressed by the story of Karen Garner? It is not only that she has cognitive decline, or that she is seventy-three-years-old, but also that she weighs eighty pounds and is five feet tall—unarmed, slight, and incapable of inflicting harm on the police. Lastly, the cognitive state of a PWD is not merely irrational and confused—it is frequently markedly immature. As dementia progresses, PWDs' cognitive capacity is more akin to that of young children than to irrational adults.

268. Amy N. Kerr, Melissa Morabito & Amy C. Watson, *Police Encounters, Mental Illness, and Injury: An Exploratory Investigation*, 10 J. POLICE CRISIS NEGOT. 116, 117–19 (2010); see William Wells & Joseph A. Schafer, *Officer Perceptions of Police Responses to Persons with a Mental Illness*, 29 POLICING: INT'L J. POLICE STRATEGIES & MGMT. 578, 580–81, 594–95 (2006).

269. Kerr et al., *supra* note 268, at 129.

270. In a recent scientific survey of two police departments, approximately 40% of the officers had prior military experience. McLean et al., *supra* note 244, at 1102 tbl.1.

of crime fighting. Consider again the case of Sam Thomas<sup>271</sup> and the case of Nancy Daoust.<sup>272</sup> In both trespassing cases, the subjects pose no danger and cause little inconvenience. Here, police here could have adopted a problem-solving or mediating role. Instead, they issue citations, and even make an arrest, stating that they have no choice because the property owner's rights are at stake and they have to enforce those rights, even when it is obvious that the subject, a PWD, could never form the requisite mens rea for the offense of trespass.<sup>273</sup> This response—prioritizing property rights over the safety and well-being of the “wrong-doers”—is consistent with the warrior model and the approach used in other cases like *Garner*, where criminality is thought to be deserving of punishment, even when that punishment is out of proportion to the crime, or the fault.<sup>274</sup>

In contrast however, most citizens feel that police should function primarily under the guardian model. The guardian model prioritizes service over crimefighting and values the dynamics of working with community members to solve problems.<sup>275</sup> Citizens feel that police can have both warrior and guardian roles, but that the majority of the time the guardian role is called for.<sup>276</sup> Though some assert this is a new model of policing, it seems very much in line with Wilson's “service” style of policing, and also with a more old fashioned view of small-town policing akin to Sheriff Andy Taylor of Mayberry fame.<sup>277</sup> Ideally, the public wants police to respond with the warrior model only when warranted, and not to approach every interaction as a possible death match. Research shows that, in fact, police are capable of policing in both models,<sup>278</sup>

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271. Blasius, *supra* note 138.

272. Low, *supra* note 134.

273. *Id.*; see Yelena Yukhvid, *Should Elderly Criminals Be Punished for Being Prisoners of the Mind? An Analysis of Criminals with Alzheimer's Disease*, 50 GONZ. L. REV. 43, 49 (2014) (addressing competency in PWDs).

274. Schielke, *supra* note 265, at 02:14.

275. Stoughton, *supra* note 244, at 231.

276. David Grace, *Being a Police Officer is Not Even in the Top 10 Most Dangerous Jobs*, MEDIUM: TECH, GUNS, POLICE, HEALTH INS., TAXES, EDUCATION & MEDIUM (June 23, 2020), <https://medium.com/technology-taxes-education-columns-by-david-grace/being-a-police-officer-is-not-even-in-the-top-10-most-dangerous-jobs-1e985540c38a> [<https://perma.cc/2ZS9-8WVA>].

277. WILSON, *supra* note 232, at 200–01; see *Andy Taylor*, FANDOM: HEROES WIKI (June 29, 2017), [https://hero.fandom.com/wiki/Andy\\_Taylor?action=history](https://hero.fandom.com/wiki/Andy_Taylor?action=history) [<https://perma.cc/F6BU-B79R>] (explaining the approach to policing taken by the fictitious character Sheriff Andy Taylor in the *Andy Griffith Show*).

278. McLean et al., *supra* note 244, at 1112–13.

but given the emphasis on warrior-style training today, police may have trouble knowing when to turn it on—or, considering they seem predisposed to this model, when to turn it off.

The situation is different when police are placed into a service-provider or social-helper role at the outset. When police respond to a call where an elderly person is a victim of fraud, for instance, they are less likely to perceive a threat. In these cases, police are already in guardian mode and more likely to take some time carefully observing the person's behavior. Under these conditions, police are more likely to recognize the symptoms of dementia and respond by referring them to social services of some kind. The disconnect occurs when the public thinks they are calling for one kind of intervention, and police think it is another. This is particularly evident when we consider the 911 calls in the Sam Thomas case,<sup>279</sup> the Martha Al-Bishara case,<sup>280</sup> and the Karen Garner case.<sup>281</sup> In all these cases, police responded to a "crime," but citizens who called in with concerns about the subjects downplayed the criminal aspect.<sup>282</sup> They were explicitly requesting the guardian model of policing. They asked for Mayberry. Instead, they got mayhem.

#### IV. SOLUTIONS

Given the multiple roles that police fill, it is inevitable that they will continue to have contact with persons with dementia and cognitive decline. Some of these situations may involve PWDs as victims of crime, some where they are perpetrators of crime, and others where they are simply individuals who need help. When police fail to recognize people with dementia, tragedies can occur.

People with dementia, however, are part of society. There is no viable solution where there are no people with dementia, or one where people with dementia never need help and never have encounters with police.

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279. Blasius, *supra* note 138.

280. Gifford, *supra* note 153.

281. Hauser, *supra* note 1.

282. In the case of Martha Al-Bishara, the caller specifically stated that the woman did not come after anyone. WTVC, *supra* note 154, at 01:00. The reports on Sam Thomas state that police were called because the driver who dropped him off was concerned. Blasius, *supra* note 138. And similarly, the Walmart employee makes very clear that the items were recovered. Fierro & Konopasek, *supra* note 5.

Accordingly, a solution should equip police so that when they encounter PWDs, they can recognize the condition, know how to approach, and assist with compassion and understanding. This kind of training already exists. The National Council of Dementia Practitioners currently offers one- and two-day seminars for first responders.<sup>283</sup> The Alzheimer's Association offers free online training for first responders.<sup>284</sup> State organizations also offer training. For instance, the Arkansas Geriatric Education Collaborative offers a free online training program for first responders.<sup>285</sup> These trainings are usually lecture based and run approximately six hours.<sup>286</sup> Officers learn the basic facts about dementia, how it affects the brain, and how it can cause certain behaviors where police are called.<sup>287</sup> Police are then taught how to approach PWDs.<sup>288</sup>

While these programs are a good start, they have shortcomings. First, they are not adopted consistently. Currently, there are no state or national mandates, so each police department decides independently whether or not to have the training, and that may come too late.<sup>289</sup> In Loveland, it was the Alzheimer's Association that reached out to the police department to offer training *after* the video of the Garner incident emerged.<sup>290</sup> So, despite the training's low-to-no cost and its ready availability, police departments are not necessarily requiring it, even when the need is evident. Instead, the training should be required across all levels of policing, with state and national mandates adopted to ensure the training occurs.

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283. *Information for Law Enforcement Training and First Responders*, NAT'L COUNCIL OF CERTIFIED DEMENTIA PRACS., <https://www.nccdp.org/lawenforcement.htm> [<https://perma.cc/JS76-N43X>].

284. *Approaching Alzheimer's: First Responder Training*, ALZHEIMER'S ASS'N., <https://training.alz.org/products/4021/approaching-alzheimers-first-responder-training> [<https://perma.cc/Q6NL-6URM>].

285. *Alzheimer's & Other Education Programs*, ARK. GERIATRIC EDUC. COLLABORATIVE, <https://agec.uams.edu/geriatric-workforce-education/alzheimers-other-dementia-education-programs/> [<https://perma.cc/6WT9-2SU3>].

286. *Information for Law Enforcement Training and First Responders*, *supra* note 283.

287. *Id.*

288. *Approaching Alzheimer's: First Responder Training*, *supra* note 284.

289. Although Alzheimer's and dementia training is not mandated at the state level, many states are now requiring de-escalation training, and those lessons might be transferable. Twenty-one states have no de-escalation training requirement though. See Gracie Stockton, *21 States Still Don't Require De-Escalation Training for Police*, AM. PUB. MEDIA REPS. (June 24, 2021), <https://www.apmreports.org/story/2021/06/24/21-states-still-dont-require-deescalation-training-for-police> [<https://perma.cc/7CAT-U5Y4>].

290. *Loveland PD Accepts Alzheimer's Association's Offer to Help Train Officers on How to Spot Dementia*, DENVER7, <https://www.denver7.com/news/local-news/loveland-pd-accepts-alzheimers-associations-offer-to-help-train-officers-on-how-to-spot-dementia> [<https://perma.cc/CY4C-ZZ3B>] (Apr. 18, 2021, 1:44 AM).

Second, because the training is short and limited, there are real questions about how well the information is retained and how much difference the training actually makes.<sup>291</sup> Police officers already spend much more time training on the use of force than on de-escalation.<sup>292</sup> A commitment to robust training, and yearly refreshers, would signal the importance of de-escalation in the hierarchy of police skills. Third, current training modules by the Alzheimer's Association and National Council of Dementia Practitioners still limit the training to scenarios where there is no threat, and police are not responding to a crime.<sup>293</sup> For instance, the Alzheimer's Association training, which is completely free and can be completed in an hour online at the officer's convenience, offers four videos, each a scenario where an officer encounters a PWD.<sup>294</sup> The scenarios are: a car driven by a PWD stopped on the side of the road; a PWD wandering; a home visit where a woman is frustrated by her agitated mother who has dementia; and a home visit where a woman with dementia has misplaced her wallet and thinks someone must have come in and stolen it.<sup>295</sup> The interactions presented are calm and unhurried. None of these scenarios places an officer on high alert, unlike a scenario where a crime has been reported. In other words, the training currently offered does not respond to the problem of police culture. While they may represent the more common interactions that police have with PWDs, they don't represent the truly problematic scenarios that often give rise to an excessive use of force. Therefore, the training alone is insufficient.

Alongside this training, protocols should be developed so that police have a clear understanding of what to do when they do encounter someone with dementia. Silver Alerts are one example of this.<sup>296</sup> Georgia and Oklahoma were the first states to enact a

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291. Jessica Winters, *New ASU Research Says Officer De-Escalation Training Works. Here's Why.*, 12 NEWS, <https://www.12news.com/article/news/local/valley/does-officer-de-escalation-training-work-asu-research-says-it-does-nov-2021/75-d5b1ff80-a7f0-4e1b-8de2-3833d376c964> [<https://perma.cc/TGU8-3CXV>] (Nov. 3, 2021, 8:21 AM).

292. RAHR & RICE, *supra* note 244 at 5, 8.

293. *Training Videos for First Responders*, ALZHEIMER'S L.A.: FIRST RESPONDERS, <https://www.alzheimersla.org/for-professionals/training-for-professionals/first-responders/> [<https://perma.cc/6T4G-Z4PJ>].

294. *Id.*

295. *Id.*

296. Silver Alerts are issued when an elderly person is missing. Modeled on Amber Alerts, the alerts issued when children are missing, Silver Alerts are distributed to police and community members through radio and television broadcasts. NAT'L ASS'N OF STATE UNITS ON AGING, SILVER ALERT INITIATIVES IN THE STATES: PROTECTING SENIORS WITH



Silver Alert program in 2006.<sup>297</sup> Now numerous states have Silver Alert or similar programs.<sup>298</sup> They are issued when a senior is missing, a common concern with PWDs who go wandering. A Silver Alert has established protocols for what to do in the search and after the person is found.<sup>299</sup> This program could be enhanced by registering a cognitively compromised loved one with the police, as they do in some communities, so that if the patient goes wandering, the police have all the information readily available.<sup>300</sup> Protocols about when to contact family, when to route the subject to the hospital, and when it is necessary to book the subject despite his dementia, will help to ensure consistency and compassion.

If we accept that police have trouble switching out of the warrior mindset, then a good solution should also aim to exclude police when possible. People with dementia engage in many types of behaviors that bring them into contact with police, but not all of these require police involvement. Instead, trained professionals with expertise in dementia should be available to handle those situations where police are not required. This would reduce the physical risks associated with police contact. Diverting administrative and non-violent, low-level offenses from police purview is already occurring in several cities. These programs, often dubbed community response units, have developed to assist individuals suffering mental health and behavioral crises.<sup>301</sup> One program, CAHOOTS, started

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COGNITIVE IMPAIRMENTS 1 (2008), [http://www.advancingstates.org/sites/nasquad/files/hcbs/files/214/10650/SilverAlertMay2008\\_OriginalReport.pdf](http://www.advancingstates.org/sites/nasquad/files/hcbs/files/214/10650/SilverAlertMay2008_OriginalReport.pdf) [<https://perma.cc/6RK9-FMKL>].

297. *Id.* at 1, 3.

298. A total of forty-seven states have adopted various adaptations of the Silver Alert program, but all vary in their criteria, resources, and degree of success. Twenty-eight states and the District of Columbia have formal “Silver Alert” programs, nine states have programs that are functionally Silver Alert programs but are not officially called “Silver Alert,” and ten states have broad missing-person programs which encapsulate Silver Alert criteria. *See, e.g.*, N.C. CTR. FOR MISSING PERSONS, NORTH CAROLINA’S SILVER ALERT PROGRAM (2007), <https://www.ncdps.gov/media/63/open> [<https://perma.cc/B4EL-AUVE>]; *Senior Alert*, COLO. BUREAU OF INVESTIGATION, <https://cbi.colorado.gov/senior-alert> [<https://perma.cc/LLX8-6Q49>]; *Endangered Missing Advisory*, S.D. GOV’T, <https://public.sd.gov/ema/> [<https://perma.cc/6FWF-V5RV>].

299. Vicki S. Gier, David S. Kreiner & James M. Lampinen, *Factors Affecting Recognition of Senior Citizens in a Silver Alert*, 32 J. POLICE CRIM. PSYCH. 185, 187 (2017).

300. BUREAU OF JUST. ASSISTANCE & INT’L ASS’N OF CHIEFS OF POLICE, NCJ No. 254712, A GUIDE TO LAW ENFORCEMENT ON VOLUNTARY REGISTRY PROGRAMS FOR VULNERABLE POPULATIONS, 2, 6 (2017), <https://www.theiacp.org/sites/default/files/all/a/Alz%20Voluntary%20Registry.pdf> [<https://perma.cc/UG5J-JPEY>].

301. Thomas S. Dee & Jaymes Pyne, *A Community Response Approach to Mental Health and Substance Abuse Crises Reduced Crime*, SCI. ADVANCES, no. 23, June 2022, at 1.

30 years ago in Eugene, Oregon.<sup>302</sup> CAHOOTS (Crisis Assistance Helping Out On The Streets) is a collaboration between local police and a community assistance clinic called White Bird clinic.<sup>303</sup> CAHOOTS assistance is routed through the non-emergency line and the 911 call center.<sup>304</sup> If the calls have a strong behavioral health component and do not appear to require law enforcement because the danger appears low and they don't involve a legal issue, then the call is routed to CAHOOTS. CAHOOTS responds with a medic and a crisis worker.<sup>305</sup> The CAHOOTS response team assesses the situation, renders assistance and directs the individual to a higher level of care or service as needed.<sup>306</sup> The CAHOOTS model has been very successful in the context of mental health emergencies and has saved the city approximately \$15,000,000 in emergency sources.<sup>307</sup> Out of all the 911 calls received, about 20% are routed to CAHOOTS.<sup>308</sup> Out of the 24,000 calls to which CAHOOTS responded in 2019, police assistance was called in for only 150.<sup>309</sup> None of the 24,000 calls resulted in a fatality.<sup>310</sup>

CAHOOTS has served as a model for similar programs in other cities. For instance, the STAR (Support Team Assisted Response) program, launched in Denver in June 2020, was based on CAHOOTS.<sup>311</sup> The STAR program provides emergency services to people experiencing crises associated with mental health, poverty, depression, or homelessness.<sup>312</sup> The program is a partnership between the Mental Health Center of Denver, the Denver Police Department, and other community stakeholders.<sup>313</sup> When an

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302. All Things Considered, 'CAHOOTS': How Social Workers And Police Share Responsibilities In Eugene, Oregon, NPR, at 00:18 (June 10, 2020), <https://www.npr.org/2020/06/10/874339977/cahoots-how-social-workers-and-police-share-responsibilities-in-eugene-oregon> [<https://perma.cc/7F9B-ZXBC>].

303. *Id.*

304. *Id.* at 00:44.

305. *Id.* at 00:56.

306. *Id.* at 01:10.

307. *Id.* at 03:05.

308. *Id.* at 01:24.

309. *Id.* at 02:07.

310. *Id.* at 04:05.

311. John Erich, *So Far, So Safe: Denver's Alternative Response Model Off to a Promising Start*, 50 EMS WORLD 20, 21–22 (2021).

312. *Support Team Assisted Response (STAR)*, WELLPPOWER <https://wellpower.org/star-program/> [<https://perma.cc/3RWC-5D8W>].

313. *Id.* The Mental Health Center of Denver changed its name to "WellPower" in spring of 2022. Carl Clark, *The Mental Health Center of Denver Emerges: WellPower*, COLORADOBIZ (May 4, 2022), <https://www.cobizmag.com/the-mental-health-center-of-denver-emerges-wellpower/> [<https://perma.cc/G366-RW3X>].

emergency call is made to 911, the agent assesses the nature of the emergency and, when appropriate, dispatches a STAR team instead of police.<sup>314</sup> The STAR team personnel are experts in danger assessment and de-escalation.<sup>315</sup> The program has been successful and has recently been expanded.<sup>316</sup>

While neither program is specifically designed to deal with PWDs, they do respond to cases involving PWDs.<sup>317</sup> If 911 callers are able to correctly identify the concern, and if 911 dispatchers are able to correctly assess the situation as one potentially involving a PWD, then this team could be dispatched instead of police, and tragic incidents could be avoided. Low-risk cases like trespass and indecent exposure could be steered to these response teams.

It is noteworthy that under these programs, other criminal offenses are still steered to police.<sup>318</sup> So implementation of something like STAR or CAHOOTS still leaves unaddressed those cases where a PWD appears to engage in criminal behavior like larceny or assault. In these cases, police will undoubtedly be called. And in traffic stops, police will still be the first on the scene. Therefore, it is essential that police receive training in how to recognize and approach PWDs, even if something like CAHOOTS or STAR is in place.

Ultimately, we must aim to reduce the number of occurrences when PWDs are subject to police oversight. This is a broader effort that must involve health-care professionals. Early testing, before the symptoms of dementia appear, can be a crucial part of diagnosis, but there is no requirement for universal, baseline cognitive testing at sixty-five.<sup>319</sup> Regular cognitive testing as part of senior health care, and a robust set of services when cognitive decline is discovered, can prevent these tragedies. Integration between medical and state services can be an important part of this. For instance, in some states, if a physician believes that their patient is

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314. *Support Team Assisted Response (STAR)*, *supra* note 312.

315. Alex Rose, *Denver's Co-Responder STAR Program is Expanding After Receiving Additional Funding*, KDVR NEWS, <https://kdvr.com/news/local/denvers-co-responder-star-program-is-expanding-after-receiving-additional-funding/?ipid=promo-link-block1> [<https://perma.cc/NFC6-NK6Q>] (Feb. 16, 2022, 2:49 PM).

316. *Id.*

317. *See, e.g., UPDATE: 57-Year-Old Man with Dementia Located and Reunited with Family*, KPIC (Feb. 15, 2020), <https://kpic.com/news/local/missing-officials-searching-for-57-year-old-with-early-onset-dementia-and-alzheimers> [<https://perma.cc/6C22-LP6F>].

318. *See* Dee & Pyne, *supra* note 301, at 1–3.

319. Graham, *supra* note 81.

suffering with dementia, they are required to report it to the DMV, and the person's license may be suspended.<sup>320</sup> In most states, however, such reporting is not required, only suggested.<sup>321</sup> If PWDs were to lose their driving licenses when their symptoms first appear, hundreds of traffic accidents might be avoided. Similar integration with firearms licensing could save lives.<sup>322</sup> Likewise, social services should be alerted when a physician perceives cognitive decline. A balance will have to be struck between the individual's autonomy and notification of a network of professional services, but better communication between service providers might save lives.

The rising wave of an aging population and the prevalence of dementia means that this is not a local problem. Seniors and PWDs exist in every town and every county. The solutions should ideally, therefore, be nationwide and not dependent on the individual interest of a local police department.

### CONCLUSION

There are numerous instances where PWDs engage in behavior that looks criminal. Even a layperson would presume that they are often not at fault in these instances. But police are responding with unnecessary and disproportionate force when they go to these calls. This poor and inappropriate response is due to police culture, which pits police against the public they are supposed to serve. Commentators have talked about the role of police culture in perpetuating violence against minority communities, immigrants, and others. PWDs are the next group of vulnerable people to fall victim to police culture. Their victimization has different causes and calls for different solutions than that of other vulnerable populations.

PWDs present significant issues with respect to criminal law. Questions of culpability and competence, for instance, are

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320. See, e.g., CAL. HEALTH & SAFETY CODE § 103900 (Deering, LEXIS through 2022 Reg. Sess.).

321. *Driving & Dementia / Alzheimer's: State Laws, Coping & Advice for Caregivers*, DEMENTIA CARE CENTRAL, <https://www.dementiacarecentral.com/caregiverinfo/driving-problems/> [<https://perma.cc/22C2-H4NJ>] (Dec. 3, 2019). NEV. DEP'T OF HEALTH & HUM. SERVS., AGING & DISABILITY SERVS. DIV., QUICK FACTS REGARDING COGNITIVE IMPAIRMENT, AND AGE RELATED LICENSE RESTRICTIONS 1, <https://adsd.nv.gov/uploadedFiles/adsdnvgov/content/Boards/TaskForceAlzheimers/State%20Regulations%20Dementia%20and%20Driving.pdf> [<https://perma.cc/7KMS-G5BP>].

322. Fredrick E. Vars, *Not Young Guns Anymore: Dementia and the Second Amendment*, 25 ELDER L. J. 51, 51–52 (2017) (evaluating the constitutionality of state laws placing restrictions on gun ownership and purchase for those diagnosed with dementia).

implicated. We can see from the numbers and the highly variable nature of dementia, that it will present complex issues for criminal law doctrine, much of which depends on binary notions and bright-line tests that do not match up with the spectrum and variability of dementia. As more PWDs come in contact with the criminal justice system, we will have to reexamine, among other things, how mens rea can be formed in the context of incomplete understanding. The criminal justice system does not have an established approach for people with complex cognitive deficiencies. Nonetheless, there are already cases going through the criminal justice system where judges are trying to apply the regular rules to this highly irregular problem.<sup>323</sup> The problem of dementia will require more tailored doctrine, specific to the variability and the changing science of dementia. Just because cases are already coming before the courts does not mean we have to apply the ill-fitting doctrine of insanity law or the binary formula of competency to dementia. But we cannot even begin to approach these issues if we do not understand the first encounters of PWD with the criminal justice system through the police. This Article is meant to be a step in that direction.

The police are already a bellwether of how the criminal justice system will respond to PWDs. Police often try to apply the wrong template to these interactions: defiant and dangerous criminals facing off against a superhero crime fighter. The police are the gateway to the criminal justice system, and in this way, they represent its enforcement, its values, and its first attempt at seeing situations in full nuanced complexity, in a way that treats citizens fairly and with dignity. If we do not understand them, we will not be able to improve our response to PWDs. Instead, we are likely to repeat and compound the unfairness, revictimizing them in the criminal justice system.

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323. See AM. BAR ASS'N, COMM'N ON L. & AGING, PERSONS LIVING WITH DEMENTIA IN THE CRIMINAL JUSTICE SYSTEM 20–26 (2022), [https://www.americanbar.org/content/dam/aba/administrative/law\\_aging/2022-dementia-crim-just-rpt.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_aging/2022-dementia-crim-just-rpt.pdf) [<https://perma.cc/A8T6-5N7H>].