STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

Case No. 2014AP108-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CHARLES V. MATALONIS,

Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION AND ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS EVIDENCED ENTERED IN KENOSHA COUNTY CIRCUIT COURT, THE HONORABLE WILBER W. WARREN, III PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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STATEMENT OF ISSUES

1. Did the officers act within the scope of the community caretaker doctrine when they conducted a warrantless search of Charles Matalonis' home for other persons who may have been injured during a recent altercation?

Trial court answered yes.

2. Alternatively, did officers have a reasonable and articulable suspicion that justified their warrantless sweep of Matalonis' home for people who may have posed a danger to them as they investigated a battery that apparently occurred inside the home?

Trial court did not answer.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The state believes that neither oral argument nor publication is necessary. The parties have fully developed the arguments in their briefs and the issues presented involve the application of well-settled legal principles to the facts.

STATEMENT OF THE CASE AND FACTS

The state will supplement the defendant-appellant, Charles Matalonis', statement of the case and facts as appropriate in its argument.

ARGUMENT

THE TRIAL COURT PROPERLY DENIED MATALONIS' MOTION TO SUPPRESS EVIDENCE SEIZED AFTER OFFICERS CONDUCTED A WARRANTLESS SWEEP OF HIS HOME.

A. Introduction

On appeal, Matalonis contends that the trial court erred in refusing to suppress evidence, i.e. marijuana plants and other drug paraphernalia seized from his residence, following a warrantless entry into his residence. Matalonis' brief at 7.

The state contends that the officers' warrantless search of Matalonis' residence was constitutionally

reasonable. Officers followed a blood trail from a place where officers took a complaint from an apparent victim of a beating to Matalonis' residence. The officers' entry into the residence was justified under either the consent exception or community caretaking exception to the warrant requirement. Once inside the residence, officers made additional legitimate plain view observations that further justified their sweep of the residence under (a) the community caretaking doctrine to check for other persons who may need assistance; and (b) the protective sweep doctrine to check for persons who may pose harm to the officers. During their check of the residence, an officer encountered a locked door that had blood on it. The officer subsequently located the key and opened the door to check for people, but found a marijuana plant and paraphernalia associated with growing marijuana inside.

Based upon the totality of circumstances, the officers' extension of their community caretaker check and protective sweep into the locked room for persons was constitutionally reasonable. As such, officers acted within the scope of the plain view doctrine when they seized contraband observed while searching the residence for people.

B. Constitutional provisions interpreted.

The Fourth Amendment to the United States Constitution, and Article I, Section 11 of the Wisconsin Constitution, protect "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." U.S. Const. amend. IV; Wis. Const. art. I, § 11. The Wisconsin Supreme Court has consistently conformed its "interpretation of Article I, Section 11 and its attendant protections with the law developed by the United States Supreme Court under the Fourth Amendment." *See State v. Rutzinski*, 2001 WI 22, ¶ 13, 241 Wis. 2d 729, 623 N.W.2d 516.

C. Standard of Review

Whether police conduct violates the guarantee against unreasonable searches and seizures presents a question of constitutional fact. On review, an appellate court will uphold a circuit court's findings of historical fact unless they are clearly erroneous. However, an appellate court decides constitutional questions independently, benefiting from the analysis of the circuit court. *State v. Kieffer*, 217 Wis. 2d 531, 541, 577 N.W.2d 352 (1998).

D. Officers lawfully entered Matalonis' residence without a warrant.

In the trial court, Matalonis challenged the officers' initial entry into the residence as unlawful as well as the subsequent search (34:82). On appeal, Matalonis "does not contest the officers' initial entry into his residence." Matalonis' brief at 16. However, because the legal basis for their initial entry also supports the basis for their subsequent search of the residence, the state will address the reasonableness of the officers' initial entry.

Judge Warren upheld the officers' initial entry into Matalonis' residence on both consent and community caretaker grounds (34:83-85). Based upon the officers' testimony (34:9, 24, 44), Judge Warren could reasonably conclude that Matalonis freely and voluntarily consented to the officers' entry into his residence. *State v. Artic*, 2010 WI 83, ¶ 30, 327 Wis. 2d 392, 786 N.W.2d 430. Equally important, Judge Warren upheld the entry on community caretaking grounds.

Under the community caretaker doctrine, an officer may constitutionally perform warrantless searches and seizures of private homes for the purpose of protecting persons and property. *See State v. Pinkard*, 2010 WI 81, ¶¶ 14, 22, 327 Wis. 2d 346, 785 N.W.2d 592. "An officer exercises a community caretaker function 'when the

officer discovers a member of the public who is in need of assistance.'" *Id.* ¶ 18 (citation omitted).

To determine whether a warrantless home entry is permissible under the community-caretaker exception, the reviewing court asks:

> (1) whether a search or seizure within the meaning of the Fourth Amendment has occurred; (2) if so, whether the police were exercising a bona fide community caretaker function; and (3) if so, whether the public interest outweighs the intrusion upon the privacy of the individual such that the community caretaker function was reasonably exercised within the context of a home.

Pinkard, 327 Wis. 2d 346, ¶ 29.

The third, "reasonable exercise" question, examines

> (1) the degree of the public interest and the exigency of the situation; (2) the attendant circumstances surrounding the [search], including time, location, the degree of overt authority and force displayed; (3) whether an automobile is involved; and (4) the availability, feasibility and effectiveness of alternatives to the type of intrusion actually accomplished.

Id. ¶ 42 (citation, footnote, and quotations omitted). No single factor is determinative. *State v. Gracia*, 2013 WI 15, ¶ 23, 345 Wis. 2d 488, 826 N.W.2d 87. "'The stronger the public need and the more minimal the intrusion upon an individual's liberty, the more likely the police conduct will be held to be reasonable.'" *Pinkard*, 327 Wis. 2d 346, ¶ 41 (citation omitted).

Judge Warren held that the officers legitimately entered the residence pursuant to their community caretaking function (34:84). He found that the officers responded to a medical emergency involving significant injury and considerable loss of blood to Antony (34:84). Antony told officers that at least four people had beaten him outside a bar (34:7, 84). The officers followed the

blood trail to Matalonis' house and did not know if they would encounter the "four guys home from the bar" there or victims who needed medical attention (34:85). "So there's a legitimate concern as a community caretaker for the safety of the citizens who may be injured and bleeding" (34:85). Judge Warren determined that the officers' actions in entering the home were justified "to search for other persons who may be bleeding inside that home as the origin of this blood trail" (34:85). These findings are not clearly erroneous and supported in the record.

The officers were exercising a bona fide community caretaker function when they entered the home. Officers responded to a call and met Antony who was being loaded in to an ambulance. He had a bloody face, blood on his shirt and was "pretty beat up" (34:41). Antony appeared highly intoxicated (34:6). Antony initially stated that four groups of people beat him, but later said that four people beat him up outside a bar (34:7). Officers followed a blood trail to find out where Antony had come from (34:7).

The blood trail led the officers to Matalonis' residence, where they observed blood on a side door (34:8, 43). They knocked and Matalonis answered (34:9). Matalonis appeared uninjured (34:9), but officers observed blood inside the foyer on the floor (34:44). Matalonis explained that he had been in a fight with his brother (34:44). Before Matalonis consented to their entry, officers informed Matalonis that they wanted to search the residence to make sure no one inside was injured (34:9, 44). Once inside, Officer Yandel remained with Matalonis, whom officers had directed to sit on the couch (34:44). Officer Ruha searched the residence to make sure no one else was injured inside and needed medical attention (34:11-12). As Officer Ruha testified, "I don't know if anyone is injured inside the house or if there's an aggressor in the house" (34:37).

Further, the public interest in entering the residence outweighed the intrusion into Matalonis' privacy interest. Applying the *Pinkard* standards, the injuries to Antony as well as the blood trail leading to the residence created a legitimate exigent situation. The officers did not forcibly enter the door, but waited for Matalonis to open the door. He confirmed that a fight had occurred earlier (34:44), but based on their observations, not at a bar as reported, but potentially in Matalonis' residence. While the officers directed Matalonis to remain on the couch, the officers did not restrain him or otherwise display a show of force (34:11, 44). Because of the nature of Antony's injuries as well as the blood trail into Matalonis' residence, it was certainly reasonable for the officers to attempt to gain entry to check on the welfare of other occupants immediately rather than await a search warrant (34:34).

Based upon the record, this court should find that the officers acted with a bona fide community caretaker function when they entered Matalonis' residence.

E. The officers' search of Matalonis' residence, including a locked room, for people was constitutionally reasonable.

Once inside the residence, the officers' search of Matalonis' residence, including a locked room, for people was constitutionally reasonable. Both the community caretaker doctrine and the protective sweep doctrine support the officers' warrantless search of Matalonis' residence.

1. Under the community caretaker doctrine, officers lawfully searched Matalonis' home, including a locked room, for other people.

Matalonis contends that the officers' search of the residence, including the locked room, was not objectively reasonable under the community caretaker doctrine. Matalonis' brief at 7.

Not only did Judge Warren find that the community caretaker doctrine supported the officers' initial entry into the residence (34:84-85), he also concluded that it also supported the officers' subsequent check of the residence for potentially injured people (34:85-87). With respect to the search of the locked room, Judge Warren noted

> So it was reasonable for them to extend their search for injured parties to that area [the locked room]. Again, with someone who is bleeding, someone who is taken away by ambulance, to have a locked door in a house with blood on that door and not search behind that door and to later find that there's a dead body or a bleeding body or a person in need of medical assistance behind that door I think it would not only be improper, it would be a sign of poor police work. So under these circumstances, I think the officers were reasonable in consideration of all of those issues [including community caretaker] in taking the actions that they did.

(34:87). Judge Warren's findings are not clearly erroneous and the record supports them.

As explained in Section D above, Officers Ruha and Yandel lawfully entered Matalonis' residence pursuant to Matalonis' consent and the community caretaker doctrine. Once Matalonis opened the door, officers observed additional blood in the foyer and leading

to the stairwell (34:44). Upon entering the residence, Officer Ruha then proceeded to check the residence to determine whether anyone inside needed medical attention (34:11, 37).

As Judge Warren noted, Officer Ruha's check focused on areas where he observed blood (34:86). On the lower level, he located drops of blood in the living room and then went to the kitchen where he observed blood (34:11-12). Officer Ruha then proceeded to the basement area. He did not enter it because he observed no blood leading to it (34:12, 27). Officer Ruha did encounter a person, Malcom Briggs, who apparently resided in the basement. Officer Ruha spoke to him (34:21, 27). Officer Ruha then proceeded upstairs (34:27). On the stairs to the second floor, he observed blood on the carpet and blood smeared along the wall leading upstairs and on the handrail. Officer Ruha saw a broken mirror. As he checked the upstairs for people, he encountered the locked door that had blood splatter on it. Officer Ruha continued past the locked door and checked the bathroom to make sure no one was inside (34:12).

Rather than breaking down the locked door, Officer Ruha sought a key from Matalonis (34:15-16, 34). Officer Ruha explained to Matalonis that he "needed to ensure no one was injured inside the room" (34:14). The delay in locating the key (rather than forcing the door) was relatively short. Officers Ruha and Yandel testified that the time it took to locate the key through Matalonis was only a matter of seconds (34:31, 55), although Officer Yandel's report suggested several minutes (34:55). That Officer Ruha asked Matalonis for a key rather than forcibly open the door does not diminish the officer's reasonable belief that an injured person was behind the door. In exercising their community caretaker responsibilities, officers may certainly act in a manner that minimizes property damage.

Matalonis suggests that once he informed the officers that he alone had fought with Antony, the officers

could no longer reasonably believe that anyone else was in the residence. Matalonis' brief at 17. Matalonis' statement certainly contradicted Antony's claim that several individuals had beaten him up outside a bar (34:7). However, as officers were rapidly acquiring information during an investigation's preliminary stages, the officers need not have accepted Matalonis' representations at face value. As Officer Ruha testified "people aren't always honest with us in telling us who's in the house and who's not in the house" (34:37). That Matalonis' story may ultimately have checked out does not render the officers' initial and immediate suspicions about the possible presence of other injured persons unreasonable.

Based upon the totality of the circumstances, the officers had an objectively reasonable basis to search beyond the locked door with blood on it for other potentially injured persons. As such, officers were exercising a bona fide community caretaker function. Based upon the significant injuries to Antony and the blood throughout the house, the public interest in immediately checking the locked room for an injured person exceeded Matalonis' privacy interest in it.

In support of his argument, Matalonis relies upon *State v. Maddix*, 2013 WI App 64, 348 Wis. 2d 179, 831 N.W.2d 778. In *Maddix*, upon responding to a domestic disturbance, officers heard a female yelling from the upper portion of the house. After officers accessed an entrance door, Maddix allowed the officers to enter his apartment. Officers separated Maddix and his girlfriend, interviewing them in separate rooms. Maddix explained that they had been arguing; the girlfriend stated she had been screaming because she was scared, but could not explain why. Only after interviewing the occupants and conferring for some time, did the officers conduct a sweep of the apartment. After completing the sweep, an officer then asked the other officer if he had checked a door on the other side of the bedroom for people. An officer then checked that closet and discovered marijuana plants. *Id*. ¶¶ 2-8.

On appeal, this court concluded that the officers were not engaged in a bona fide community caretaking function. *Id.* ¶ 1. In *Maddix*, officers responded to a domestic incident involving an argument between two people, who appeared to be the only persons in the apartment. This court noted that in other cases, "officers had evidence pointing concretely to the possibility that a member of the public was in need of assistance. . . ." *Id.* ¶ 27. Further, the officers were present in the apartment for twenty-five to thirty minutes before initiating a search and during that time, the officers had not became aware of any evidence that supported the idea of a third person's presence. *Id.* ¶ 28. Taken together, this court concluded that there was not an objectively reasonable basis to conclude that there was a bona fide need to render assistance. *Id.* ¶ 30. Further, even if a bona fide need had existed, the public interest in furthering the search did not exceed Maddix's privacy interest. *Id.* ¶ 31.

Here, the officers acted upon a bona fide need to render assistance inside Matalonis' residence. Unlike *Maddix,* which appeared to involve only a verbal argument, officers had concrete evidence, based upon the injuries to Antony requiring medical treatment, and the blood trail into Matalonis' residence, that a violent assault had occurred inside. Further, while Matalonis indicated that he had fought with Antony, Antony had related that multiple persons had assaulted him, albeit at a bar. Based upon the available information, officers were certainly not required to conclude that only Antony had been injured. Upon entering the residence, Officer Ruha acted immediately to check the residence for injured persons, focusing on areas where blood was located. As Officer Ruha went upstairs he observed a broken mirror and blood, suggesting that a melee had occurred at that location. Unable to open a locked door that had blood on it, Officer Ruha delayed briefly to obtain the key from Matalonis. Unlike *Maddix*, the facts here support Judge Warren's conclusion that the officers had a bona fide community caretaker purpose when they searched the

locked room. Further, the public interest in rendering aid exceeded Matalonis' privacy interest.

Matalonis also relies upon *State v. Ultsch*, 2011 WI App 17, 331 Wis. 2d 242, 793 N.W.2d 505, in which this court rejected application of the community caretaker doctrine to a hit and run case. Officers located the damaged vehicle. A boyfriend indicated that his girlfriend was the vehicle's operator and was in the house, possibly in bed or asleep. *Id*. ¶¶ 4-5. Vehicle damage was limited to the right front fender. Officers had no information from others, including her boyfriend, that Ultsch had been injured. Likewise, they did not observe any physical evidence of injury in the vehicle or a blood trail leading from the vehicle to the house. *Id*. ¶¶ 19-21.

Unlike *Ultsch*, the officers here had evidence that Antony had been involved with a fight with other people inside Matalonis' residence. While Matalonis did not appear to have physical injuries, officers were not required to assume that Antony was the only source of blood inside Matalonis' residence. As such, the officers could reasonably conclude that an injured party could be behind the door that had blood on it.

In sum, officers were engaged in a bona fide community caretaker function. They possessed an objectively reasonable basis to conclude that someone may have been inside Matalonis' locked room that required assistance. In this particular case, the public interest in verifying no one else had sustained any injuries exceeded Matalonis' privacy interest in preventing the officers from accessing the locked room.

2. Alternatively, officers lawfully conducted a protective sweep of Matalonis' home, including the locked room, for people.

In addition to the community caretaker doctrine, the protective sweep doctrine also supports the officers' search of the residence, including the locked room, for people.

In *Maryland v. Buie*, 494 U.S. 325 (1990), the United States Supreme Court established the protective sweep exception to the warrant requirement. "'A protective sweep is a brief search of the premises, ordinarily occurring during an arrest, to ensure the safety of those on the scene.'" *State v. Horngren*, 2000 WI App 177, ¶ 20, 238 Wis. 2d 347, 617 N.W.2d 508 (citation and emphasis omitted). An officer may conduct a protective sweep when the officer "possesses a 'a reasonable belief based on specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warranted the officer in believing that the area swept harbored an individual posing a danger to the officer or others.'" *State v. Sanders*, 2008 WI 85, ¶ 32, 311 Wis. 2d 257, 752 N.W.2d 713 (citation omitted). A protective sweep is limited in scope to those places where a person may be found and no longer than necessary to dispel reasonable suspicion. *Buie*, 494 U.S. at 335-36. Finally, while protective sweeps often occur in the context of an arrest, officers may also conduct a protective sweep in conjunction with a warrantless entry pursuant to a community caretaker exception. *Horngren*, 238 Wis. 2d 347, ¶ 20.

During a protective sweep, officers may enter areas that the occupants have secured from easy access. For example, the Seventh Circuit upheld a protective sweep that required officers to force open four locked doors. *United States v. Burrows*, 48 F.3d 1011, 1016-018 (7th

Cir. 1995), cited with approval in *State v. Blanco*, 2000 WI App 119, ¶ 24, 237 Wis. 2d 395, 614 N.W.2d 512. Similarly, in *Blanco*, this court upheld a protective sweep in which officers used a screw driver to remove screws fastening a panel to a ceiling crawl space to search for a concealed person. *Id.* ¶¶ 25, 28.

In assessing a protective sweep's reasonableness, this court has noted that "a protective sweep is not a series of slides, any one of which can be isolated and then examined with the precision of an academic scalpel. Rather, it is a continuum of action, and sometimes reaction, requiring split-second decisions that ought be examined only under the microscope of reasonableness." *Blanco*, 237 Wis. 2d 395, ¶ 27. *See also United States v. Sharpe*, 470 U.S. 675, 686-87 (1985) (courts assessing reasonableness should take care to consider whether police are acting in a swiftly developing situation, and should not indulge in unrealistic second-guessing).

Here, Judge Warren found that the officers did not know if other persons, who were the aggressors, were present in the home. "[T]hey don't know if they're going to find four guys home from the bar that are there" (34:85). Judge Warren's findings are not clearly erroneous.

Based upon the seriousness of Antony's injuries and his statement that several people had beaten him, Officers Ruha and Yandel could reasonably believe that the blood trail would lead them to the place where other people had assaulted Antony. Upon gaining access to the residence, Officer Ruha "conducted a protective sweep of the house to make sure that no one else was inside the house . . ." (34:11). He did not know if an aggressor was still inside (34:37). Officer Ruha sought from Matalonis the key to the locked door because Officer Ruha "wanted to get in there for a protective sweep" (34:33).

Antony and Matalonis provided conflicting versions of what had happened. While Antony

complained that several persons had assaulted him outside a bar, Matalonis claimed he had fought with his brother at the residence (34:19). During the investigation's preliminary stages, officers need not have accepted Matalonis' representation regarding the circumstances surrounding the fight, including the number of persons involved. As Officer Ruha testified "people aren't always honest with us in telling us who's in the house and who's not in the house" (34:37). Under the circumstances, officers acted reasonably in searching the locked room for other persons who could have posed a danger to them as they investigated the battery that had occurred inside Matalonis' residence.

Finally, the officers' efforts to use a key to access the locked room rather than forcibly open it does not undermine their justification for a protective sweep. That Officer Ruha asked Matalonis about a key does not diminish his reasonable belief that someone was hiding in the locked room who could pose harm to the officers and others as they investigated battery. Certainly, nothing prevents officers from acting in a manner that minimizes property damage while conducting a protective sweep.

Under the circumstances, this court should find that the officers acted reasonably, based upon the totality of circumstances, in sweeping the residence, including the locked room, for persons who may have posed a danger to the officers or others as they investigated Antony's battery complaint.[1]

[1] If this court finds that the officers legitimately acted pursuant to either the community caretaker or protective sweep doctrines, then the officers acted reasonably in seizing contraband observed in plain view. *See State v. Carroll*, 2010 WI 8, ¶ 21, 322 Wis. 2d 299, 778 N.W.2d 1.

CONCLUSION

For the above reasons, the state requests that this court affirm Matalonis' judgment of conviction.

Dated this 5th day of May, 2014.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 3,915 words.

Dated this 5th day of May, 2014.

_____
Donald V. Latorraca
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 5th day of May, 2014.

_____
Donald V. Latorraca
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