STATE OF WISCONSIN
C O U R T O F A P P E A L S
DISTRICT II

Case No. 2014AP000108 - CR

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

CHARLES V. MATALONIS,
Defendant-Appellant.

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

REPLY BRIEF OF DEFENDANT-APPELLANT

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STATEMENT OF THE CASE

The Defendant-Appellant (hereafter Matalonis) reiterates his Statement of the Case from his Brief-in-Chief. See Matalonis' brief, pages 2-4. The Plaintiff-Respondent (hereafter the State) does not provide a separate Statement of the Case, so Matalonis will address any difference of fact in the following reply.

I. NEITHER THE COMMUNITY CARETAKER DOCTRINE NOR THE PROTECTIVE SWEEP DOCTRINE JUSTIFIED THE OFFICERS SEARCH OF MATALONIS' RESIDENCE, ESPECIALLY THE LOCKED, UPSTAIRS ROOM.

A. The parties disagree (1) whether the officers had an objectively reasonable basis to believe that a member of the public was in need of assistance and (2) whether the officers reasonably exercised

the community caretaker function, if it was bona fide.

1. The parties agree on the appropriate three-part analysis in applying the community caretaker doctrine.

Both parties ask the court to apply the following three-part analysis to determine whether a warrantless entry and search of a home is permissible under the Community Caretaker Doctrine:

> (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.

State v. Maddix, 2013 WI App 64, ¶16, 348 Wis. 2d 179, 831 N.W.2d 778 (citing *State v. Pinkard*, 2010 WI 81, ¶ 29, 327 Wis. 2d 346, 785 N.W.2d 592).

The State does not contest the first element, whether a search or seizure occurred within the meaning of the Fourth Amendment. See State's Brief, pages 5-12. Similar to *Maddix*, this court should find that "the first element of the community caretaker exception's three-part test is met and [ ] continue to the second step of the test." *Id*. at ¶ 19.

2. The parties disagree whether the officers exercised a "bona fide community caretaker function" in searching Matalonis' residence.

Whether the officers exercised a bona fide community caretaker function in searching Matalonis' residence depends on whether the officers had "an objectively reasonable basis to believe that there is a

member of the public who is in need of assistance." *Maddix*, 2013 WI App 64, at ¶ 20. Broken down, the parties disagree about:

- Whether a member of the public exists; and
- Whether that member of the public is in need of assistance.

Rather than reiterate Matalonis' analysis of whether the officers' exercised a bona fide community caretaker function, this brief will highlight the State's shortcomings in analyzing this element of the three-part test.

Both the trial court and the State wrongly focuses on what the officers *did not know* and not on what specific, articulable facts pointed to the "an objectively reasonable basis to believe that there is a member of the public who is in need of assistance." In particular, the State's brief highlights:

- "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." State's brief, pages 5-6.
- "As Officer Ruha testified, '*I don't know* if anyone is injured inside the house or if there's an aggressor in the house.'" State's brief, page 6.
- "[T]he officers *did not know* if other persons, who were the aggressors, were present in the home." State's brief, page 14.
- "He [Officer Ruha] *did not know* if an aggressor was still inside." State's brief, page 14.

Focusing on what the officers "did not know," the State inverts the requirement that the officers have specific, articulable facts showing (a) a member of the public exists and (b) that member of the public needs assistance. The State creates a new standard, where the lack of knowledge justifies searching a residence.

In the Wisconsin cases upholding a search of a residence based upon the community caretaker exception, the officers had received information of someone existing within the residence that needed assistance. In *State v. Pinkard*, the officers "received an anonymous tip that: the caller had just left the residence; inside that residence two people appeared to be sleeping; cocaine, money, and a digital scale were located next to them; and the rear door to the residence was standing open." 2010 WI 81, ¶2, 327 Wis. 2d 346, 785 N.W.2d 592. Similarly, in *State v. Garcia*, the officers observed significant damage to Garcia's vehicle and her boyfriend also expressed concern for Garcia's well-being. 2013 WI 15, ¶¶ 21-22, 345 Wis. 2d 488, 826 N.W.2d 87.

By contrast, the Wisconsin cases not upholding a search of a residence based upon the community caretaker exception, the officers lacked information about either (a) a specific member of the public or (b) that the member of the public needed assistance. In *State v. Ultsch*, the officers identified a member of the public, namely Ultsch (who was the driver of the damaged vehicle), but they lacked information that she was in need of assistance. 2011 WI App 17, ¶¶ 19-21, 331 Wis. 2d 242, 793 N.W.2d 505. Specifically, the damage to the vehicle was minimal and Ultsch's boyfriend informed the officers that he was not injured or in need of assistance. *Id*. Likewise, in *Maddix*, the officers lacked evidence corroborating their theory that "another person was present in the apartment," aside from the two people initially identified—Maddix and his girlfriend. 2013 WI App 64, at ¶ 27.

Here, the officers had no specific information that another person or member of the public existed or that said person needed assistance. The officers met with Antony, Matalonis' brother, at a different residence (510 45th Street)—he received immediate treatment for his injuries. R. 34; 6, 41-42. The officers followed Antony's trail of blood to Matalonis' residence (4418 5th Avenue), where they met with Matalonis. R. 34; 7-8, 42. Matalonis was uninjured and cleaning up his residence with a mop. R. 34; 25, 52, 62, 64.

The only statement or information suggesting that another person existed who might need assistance (besides Matalonis and his brother Antony) was Antony's statement to the officers that four people beat him up outside a bar. R. 34; 7. However, Antony's statement ran counter to all other evidence the officers had prior to searching Matalonis' residence. First, as the State concedes, "[Ruha] confirmed that a fight had occurred earlier, but based on their observations, not at a bar as reported, but potentially in Matalonis' residence." State's brief, page 7. Second, Matalonis explained that he had fought his brother earlier—he does not mention anyone else being involved. R. 34; 19, 44, 50, 62. Third, the officers acknowledge hearing no cries for help or other observations or information suggesting that someone else was located within Matalonis' residence and in need of assistance. R. 34; 12, 23, 37, 50. Finally, Antony's stated *he was beat up*, not the four imaginary guys—he did not say they were beat up and in need of assistance.

Although the State makes much of the blood observed throughout the first and second floors of Matalonis' residence, it fails to explain how the presence of blood shows that another person besides Matalonis was in the residence. State's brief, pages 3, 6, 7-9, 11-12. In fact, the State concedes that this evidence only supports the conclusion that "a melee *had occurred* at that location." State's brief, page 11 (emphasis added). By contrast, the State fails to articulate how, beyond Antony's earlier

statement about being beaten by four guys at a bar, the blood equals proof that another person was in Matalonis' residence. As discussed above, Antony's statement had no corroboration whatsoever in the officers' later observations. See State's Brief, 7.

Matalonis contends that this case would be different had the police responded to his house before locating Antony, where they would still be looking for the source of the blood. This case would also be different if a person's blood could be specifically identified such that the officers could reason that the blood was not Antony's. Here, the blood was connected to Antony by the officers' observations of Antony and Matalonis' statements to the officers. Without something more connecting the blood to someone *besides* Antony, the blood does not provide an objectively reasonable fact justifying the officers' search of Matalonis' residence. As such, this "concrete evidence" is no different than damage to a vehicle in *Ultsch* or the sounds of screams in *Maddix*: evidence of a previous altercation or collision, yes, evidence that another person exists in need of assistance, no. 2011 WI App. 17 at ¶¶ 19-21; 2013 WI App 64 at ¶ 27. As the *Maddix* court recognizes, physical possibility is not the same as objectively reasonable fact. *Id*. at ¶ 27.

The officers had just as little reason to enter the upstairs, locked room as they did to enter the basement, for they were only searching places with blood. R. 34; 12, 27. Indeed, no blood trail led to the locked room, and the only blood on the locked room door was a small speck ("the least amount of blood anywhere in the house"). R. 34; 12, 34. Upholding the officers' search of Matalonis' residence, especially the locked room with its mere speck of blood on it, would open the door to warrantless searches of residences with proof that a crime had occurred, regardless of whether any specific, articulable facts pointed to the existence of persons in need. In other words, the fourth amendment searches and seizures would boil down to what officers "did not know," as opposed to what reasonable

suspicions they had. As the *Maddix* court warns, such a decision "could allow this exception to justify virtually any residential 'sweep' as part of a police response to an alleged domestic disturbance." 2013 WI App 64 at ¶ 37.

3. The officers unreasonably executed the community caretaker function, which cuts against it being a bona fide function in the first place.

The officers, the court, and the State focus upon the exigency of the situation, but the officers' execution of the community caretaker function shows a lack of exigency. The State's brief highlights how important getting inside the locked room was to the officers:

- "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 trial." State's brief, page 6.

- "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." State's brief, page 7.

- "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 . . . ." State's brief, page 8.

By contrast, he officers' deliberate actions cuts against the reasonable belief that someone was bleeding inside the locked room. First, after the officers encountered the locked door, they continued past the locked door to

check other rooms. R. 34; 12. If the officers had a sincere concern for somebody being behind that door, then they would have entered that room immediately—by force if necessary. Second, the officers "did smell a strong odor of marijuana coming through this [locked] door and [ ] heard a fan running." R. 34; 28. This observation indicates that the officers were making observations wholly independent from searching for persons in need of assistance. Third, the officers confronted Matalonis about what was inside the door, asking for a key, a process that took many minutes according to one of the officers. R. 34; 55. Again, a reasonable officer would not have searched for a key or asked the homeowner for permission to enter a locked room if they sincerely believed that a person was inside the locked door bleeding or otherwise in need of assistance. Finally, the officers never questioned Matalonis about his brother Antony's statements about four guys beating him up outside of a bar. As explained in *Maddix:*

> It is relevant to the overall question of reasonableness that the officers looked for people in every room of the apartment, without consent, apparently without first asking one person present whether anyone else might be there and after Maddix already stated that only he and his girlfriend were present. Thus, even had we concluded that the officers engaged in a bona fide community caretaker [348 Wis.2d 201] function, this factor favors concluding that the officers unreasonably exercised that function.

2013 WI App 64 at ¶ 36. Taken together, the officers' execution shows that the exigency was far from as immediate as they testified to at the motion hearing. Rather, the officers were investigating possible illegal drugs, not looking for persons in need of assistance.

B. The parties disagree whether the officers had "specific and articulable facts" justifying the protective sweep of Matalonis' residence, including the locked room.

1. The officers lacked specific and articulable facts that Matalonis' residence harbored an individual posing a danger to officers or others.

On one hand, the parties agree that an officer may conduct a protective sweep when the officer "possesses 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 (citations omitted). Moreover, whether the officers were justified in conducting the sweep requires analyzing the totality of the circumstances. See *State v. Welsh*, 108 Wis.2d 319, 328, 329, 321 N.W.2d 245 (1982).

On the other hand, the totality of the circumstances shows that no specific and articulable facts supported a reasonable belief that another person was in Matalonis' residence and posing a danger to either the officers or Matalonis. First, as discussed above, Antony's statement to the officers was not corroborated by Matalonis nor anything else suggesting another person was inside the residence. R. 34; 23, 37, 50. Second, Matalonis, who was calmly cleaning his house upon arrival of the officers, advised them that he and his brother were fighting—he did not suggest that anyone else was involved. R. 34; 19, 44, 50, 62. Third, Matalonis was cleaning up the mess when the officers arrived—he made no indication that he was fearful of another individual inside his own residence. R. 34; 25, 44, 52, 62, 64. Fourth, the officers never asked Matalonis about other persons inside the residence or about Antony's story about the four guys at the bar. R. 34; 17, 23, 37, 50. Finally, the State fails to reconcile why the officers did not

go into the basement looking for possible threats, if that was their reasonable suspicion. State's brief, page 9. R. 34; 12, 27.

Here again, both the trial court and the State misconstrue the standard allowing for protective sweeps. The focus is not what the officers' "don't know" but what facts give reason to believe that a threat exists to the officers or the known individuals in a residence. Just as the officers have no information suggesting that another person existed in the residence who needed assistance, even less information suggests that a threat existed justifying the sweep.

CONCLUSION

For the reasons stated above, Matalonis asks the court of appeals to overturn the trial court's order denying his motion to suppress as well as the court's judgment of conviction and remand the case for further proceedings.

Dated this 16th day of May, 2014.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 2621 words.

Dated this 16th day of May, 2014.

Signed:

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CERTIFICATE OF COMPLIANCE
WITH 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 § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after 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 16th day of May, 2014.

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