STATE OF WISCONSIN

IN SUPREME COURT

No. 2014AP108-CR

STATE OF WISCONSIN,

Plaintiff-Respondent-Petitioner,

v.

CHARLES V. MATALONIS,

Defendant-Appellant.

ON A PETITION FOR REVIEW OF A DECISION REVERSING AN ORDER DENYING A MOTION TO SUPPRESS EVIDENCE AND A JUDGMENT OF CONVICTION ENTERED IN THE KENOSHA COUNTY CIRCUIT COURT, THE HONORABLE WILBER W. WARREN, III, PRESIDING

BRIEF AND APPENDIX OF PLAINTIFF-RESPONDENT-PETITIONER

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ISSUES PRESENTED FOR REVIEW

1. Under the community caretaker doctrine, did the officers act reasonably when, while lawfully inside Matalonis's home, they conducted a warrantless search behind a locked door that had blood on it because of their belief that additional persons may have been injured during a battery that had occurred inside the home?

The circuit court concluded that the officers acted reasonably and within the scope of the community caretaking doctrine when they searched the locked room for other persons who may have been injured (34:84-87, 89; Pet-Ap. 209-12, 214).

The court of appeals held that the search did not fall within the community caretaker exception. *State v. Matalonis*, No. 2014AP108-CR, slip op. ¶ 37 (Wis. Ct. App. Dec. 23, 2014) (Pet-Ap. 116). It concluded that the officers did not have an objectively reasonable basis to conclude that anyone inside the home was injured. *Id.* ¶ 25 (Pet-Ap. 112). It also determined that the public interest in the intrusion was minimal and did not outweigh the substantial intrusion on Matalonis's privacy interests. *Id.* ¶ 36 (Pet-Ap. 116).

The dissent would have held that "the State carried its burden to demonstrate that the officers had an objectively reasonable basis to act as community caretakers through the search." *Id.* ¶ 38 (Pet-Ap. 117) (footnote omitted).

2. Alternatively, under the protective sweep doctrine, did officers have a reasonable suspicion that justified their warrantless sweep of a locked room inside Matalonis's home for people who may have posed a danger to them as they investigated a battery that occurred inside the home?

The circuit court also concluded that the officers acted reasonably under the protective sweep doctrine when they unlocked the door with blood on it to search for a potential aggressor (34:84-87, 89; Pet-Ap. 209-12, 214).

The court of appeals also held that the search was not a valid protective sweep. It concluded that the evidence before the officers did not provide an objectively reasonable basis for the officers to believe that their safety was at risk. *Matalonis*, slip op. ¶¶ 26-30 (Pet-Ap. 112-13).

The dissent declined to address the applicability of the protective sweep doctrine because it would have upheld the search under the community caretaker doctrine. *Id.* ¶ 38 n.1 (Pet-Ap. 117).

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

By granting the State's petition for review, this Court has indicated that oral argument and publication are appropriate.

STATEMENT OF THE FACTS AND THE PROCEDURAL HISTORY OF THE CASE

The Nature and Procedural Status of the Case

The State charged Charles V. Matalonis with manufacturing or delivering tetrahydrocannabinols (THC), contrary to Wis. Stat. § 961.41(1)(h)1, possession of drug paraphernalia, contrary to Wis. Stat. § 961.573(1), and possession of tetrahydrocannabinols, contrary to Wis. Stat. § 961.41(3g)(e) (1). Matalonis moved to suppress the evidence that officers seized following the officers' warrantless entry into a locked room inside his home (17). Following an evidentiary hearing, the circuit court denied Matalonis's suppression motion (34:89; Pet-Ap. 214).

Matalonis subsequently entered a no contest plea to the manufacturing charge and was placed on probation for eighteen months (26:1; Pet-Ap. 124). Matalonis appealed the circuit court's denial of his suppression motion.

In a 2-1 decision, the court of appeals reversed the judgment of conviction and order denying Matalonis's motion to suppress, holding that the officers' search fell

outside of the community caretaker exception to the warrant requirement. *Matalonis*, slip op. ¶ 37 (Pet-Ap. 116). The court of appeals also concluded that the search did not constitute a lawful protective sweep. *Id.* ¶ 30 (Pet-Ap. 113).

Facts Relevant to Issues Presented for Review

Kenosha Police Officers Brian Ruha and David Yandel were dispatched to a medical call at a residence on 45th Street in Kenosha. Officers met with Matalonis's brother, Antony. Officer Ruha described Antony as "highly intoxicated" and "battered . . . his whole right side of his body was covered in blood" (34:6; Pet-Ap. 131). Officer Yandel noted that Antony had blood on his face and shirt and looked "pretty beat up" (34:41; Pet-Ap. 166). Antony told the officers that "four different groups of people" beat him outside a bar. Later he stated that "four people" beat him outside a bar (34:7; Pet-Ap. 132).

After an ambulance had transported Antony to the hospital (34:41-42; Pet-Ap. 166-67), officers observed blood between two houses on 45th Street. Officers wanted to determine where Antony came from, where the blood originated, and if anyone else was involved (34:7; Pet-Ap. 132). Officer Yandel also noticed that a blood trail led up a stairwell to an upper unit at the 45th Street address (34:42; Pet-Ap. 167). After making contact with the occupant and determining that the blood did not originate at that location, officers followed the blood trail through the snow to Matalonis's home. Officers observed blood on a side door to the residence (34:7-8, 42-43; Pet-Ap. 132-33, 167-68).

As officers approached the residence, Officers Ruha "heard two loud bangs coming from inside the residence" (34:8, 25; Pet-Ap. 133, 150). Officer Ruha stated that they "had no idea what was going on inside the residence[,]" so they called for additional backup (34:8; Pet-Ap. 133). Officer

Yandel explained that they had observed "a pretty significant amount of blood, and []were concerned that maybe somebody was injured inside" and believed that they might need to enter the residence to conduct a check on the welfare of someone inside (34:43; Pet-Ap. 168).

Officers Ruha and Yandel knocked on the front door and Matalonis answered it (34:8-9; Pet-Ap. 133-34). Matalonis was shirtless. He did not have any noticeable injuries, but appeared out of breath (34:9, 44; Pet-Ap. 134, 169). Officer Yandel noticed blood in the foyer on the floor and blood that led up a stairwell (34:44; Pet-Ap. 169).

Officers informed Matalonis that they had found an injured person several houses away and had followed the blood trail to Matalonis's home. The officers explained that they needed to enter his home to make sure that no one else inside was injured (34:9-10, 44; Pet-Ap. 134-35, 169). Matalonis let them inside (34:10, 44; Pet-Ap. 135, 169). Matalonis told the officers that he lived alone (34:10; Pet-Ap. 135). Matalonis later told Officer Yandel that M.B. lived in the basement (34:53: Pet-Ap. 178; Ex. 37:S-5 at 3). During his initial contact with the officers, Matalonis told the officers that he got into a fight with his brother (34:19, 44; Pet-Ap. 144, 169).

Matalonis brought the officers into the living room area. Officer Yandel asked him to have a seat on the couch (34:44; Pet-Ap. 169). Officer Ruha "conducted a protective sweep . . . to make sure that no one else was inside the house or even injured . . . [who] needed medical attention" (34:11; Pet-Ap. 136). Officer Ruha observed a couple of drops of blood in the living room and another couple of drops in the kitchen (34:11-12; Pet-Ap. 136-37). He looked in the basement and did not see any blood. Officer Ruha

encountered another person, M.B., who resided in a basement room. He waited for M.B. to exit his room, spoke to him, and then checked other areas of the residence (34:21, 27; Pet-Ap. 146, 152).

Officer Ruha proceeded to the second floor. He observed "what appeared to be droplets of blood on the carpet and blood smeared all along the wall leading upstairs" (34:12; Pet-Ap. 137). Officer Ruha saw "blood all over the handrail" and glass shards from a broken mirror on the floor (34:12; Pet-Ap. 137). He then saw a door with a deadbolt that had blood spatters on it. Officer Ruha attempted to open the door, but it was locked (34:12-13; Pet-Ap. 137-38). He then continued past the locked door to the bathroom to ensure no one was inside (34:12; Pet-Ap. 137). Officer Ruha went back to the locked door. He did not hear anyone inside, but he did smell a strong odor of marijuana coming through the door and heard a fan running (34:28; Pet-Ap. 153). During his initial sweep of the second floor, Officer Ruha observed other drug-related contraband including paraphernalia for smoking marijuana (34:16-17, 27-28; Pet-Ap. 141-42, 152-53).

Officer Ruha then returned to the first floor and asked Matalonis to provide him with a key to the locked door. Officer Ruha informed Matalonis that he needed to ensure that no one was injured inside the locked room. Officer Ruha explained that he would kick the door in if Matalonis did not provide a key (34:14; Pet-Ap. 139).

After first telling the officers that the locked room had security cameras, Matalonis acknowledged that he had growing marijuana plants inside the room and told them where to locate the key. Officer Ruha located the key, opened the door with a key, and discovered a large marijuana plant (34:15-16; Pet-Ap. 140-41). Matalonis disputed telling the

officers where he had placed the key (34:66; Pet-Ap. 191). Officers unsuccessfully attempted to obtain a search warrant after they had secured the residence (34:34; Pet-Ap. 159).

Disposition in the Circuit Court

The circuit court found that Matalonis consented to the officers' entry into his home (34:83; Pet-Ap. 208). When the officers arrived at Matalonis's home, they did not know whether injured persons or potential aggressors were inside. The circuit court found that the officers had "a legitimate concern as a community caretaker for the safety of citizens who may be injured . . ." (34:85; Pet-Ap. 210).

The circuit court described the officer's actions inside the home as a "protective search and for injured parties" (34:85-86; Pet-Ap. 210-11). The officers only searched areas where they found blood and only searched in places where bodies might be found (34:86; Pet-Ap. 211). Based upon the presence of blood on the locked door, the circuit court concluded that the officers acted reasonably when they searched the locked room. In upholding the officers' warrantless search of the locked room, the circuit court relied on several grounds, including the community caretaker doctrine and protective sweep doctrine (34:84, 87, 89; Pet-Ap. 209, 212, 214).

Disposition in the Court of Appeals

The majority held that the search did not fall within the community caretaker exception. *Matalonis*, slip op. ¶ 37 (Pet-Ap. 116). It concluded that the officers lacked an objectively reasonable basis to conclude that anyone inside the home was injured. *Id.* ¶ 25 (Pet-Ap. 112). It also determined that the public interest in the intrusion was minimal and did not outweigh the substantial intrusion on Matalonis's privacy interests. *Id.* ¶ 36 (Pet-Ap. 116).

The majority also held that the search was not a valid protective sweep. It concluded that the evidence before the officers did not provide an objectively reasonable basis for the officers to believe that their safety was at risk. *Id.* ¶ 29 (Pet-Ap. 113).

Judge Blanchard dissented, concluding that "the State carried its burden to demonstrate that the officers had an objectively reasonable basis to act as community caretakers through the search." *Matalonis*, slip op. ¶ 38 (Pet-Ap. 117) (footnote omitted).

SUMMARY OF THE ARGUMENT

The officers' warrantless search of Matalonis's residence was constitutionally reasonable. After taking a complaint from a battered and intoxicated Antony, officers followed a blood trail through the snow to Matalonis's 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 observed additional blood on the main floor and leading up the stairs to the second floor. These plain view observations justified the officers' sweep of the residence under: (a) the community caretaking doctrine to look for other persons who may have been injured at the residence; and (b) the protective sweep doctrine to check for persons who may have posed harm to the officers as they investigated the battery that had occurred inside the home. When an officer checked the second floor, he encountered a locked door that had blood spatter 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 the circumstances, the officers' extension of their community caretaker check and protective sweep into the locked room for persons was

constitutionally reasonable. Officers acted within the scope of the plain view doctrine when they seized contraband from the residence, including the locked room.

ARGUMENT

The officers acted reasonably when they followed a blood trail through Matalonis's home looking for other persons who may have been injured or posed a danger to the officers as they investigated a battery that had occurred inside the home.

I. Introduction.

A. Constitutional provisions interpreted.

The Fourth Amendment to the United States Constitution, and Article I, § 11 of the Wisconsin Constitution, protect "[t]he 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. This Court has generally 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; *see also State v. Kramer,* 2009 WI 14, ¶ 18, 315 Wis. 2d 414, 759 N.W.2d 598 ("Pursuant to our usual practice, we shall interpret the provisions of the Fourth Amendment and Article I, Section 11 as equivalent in regard to community caretaker analyses.").

B. Standard of review.

On review, an appellate court will uphold a circuit court's findings of historical fact unless they are clearly erroneous. *State v. Pinkard*, 2010 WI 81, ¶ 12, 327 Wis. 2d 346, 785 N.W.2d 592. But an appellate court independently

reviews the circuit court's application of the relevant constitutional principles to those facts. *Id.* Whether police conduct violates the guarantee against unreasonable searches and seizures presents a question of constitutional fact. *Kramer*, 315 Wis. 2d 414, ¶ 16. 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).

C. The constitutionality of a warrantless search turns on the reasonableness of the officers' actions.

The Fourth Amendment and Article 1, § 11 of the Wisconsin constitution protect against unreasonable searches and seizures. *Pinkard*, 327 Wis. 2d 346, ¶ 13. "'The ultimate standard set forth in the Fourth Amendment is reasonableness.'" *Id.* (quoting *Cady v. Dombrowski,* 413 U.S. 433, 439 (1973)). The State bears the burden of establishing reasonableness of the search by clear and convincing evidence. *Kramer,* 315 Wis. 2d 414, ¶ 17 (warrantless search must be reasonable to be in compliance with the Fourth Amendment).

In assessing reasonableness, courts have recognized that "[a] reasonable judgment by the police at the scene should not lightly be overturned by the courts. 'Judicial retrospective mulling fails to effectively weigh exigencies unless considered in the perspective of the immediacy confronting the officer.'" *State v. Drogsvold*, 104 Wis. 2d 247, 268, 311 N.W.2d 243 (Ct. App. 1981) (quoting *State v. Donovan*, 91 Wis. 2d 401, 414, 283 N.W.2d 431, 436 (Ct. App. 1979)). "But we do not apply hindsight to the exigency analysis; we consider only the circumstances known to the officer at the time he made the entry and evaluate the reasonableness of the officer's action in light of those circumstances." *State v. Richter*, 2000 WI 58, ¶ 43, 235 Wis. 2d 524, 612 N.W.2d 29 (assessing reasonableness

under exigent circumstances exception). *See also State v. Krause*, 168 Wis. 2d 578, 589, 484 N.W.2d 347 (Ct. App. 1992) (reasonableness of action by police judged from perspective of reasonable officer at scene rather than 20/20 hindsight). In sum, a court's inquiry into reasonableness does not demand that an officer's determinations "always be correct, but that they always be reasonable." *Illinois v. Rodriguez*, 497 U.S. 177, 186-87 (1990).

D. Matalonis does not dispute the lawfulness of the officers' entry into his home.

Before the circuit court, Matalonis challenged the lawfulness of the officers' entry into his home (34:82; Pet-Ap. 207). Judge Warren upheld the officers' initial entry into Matalonis's residence on both consent and community caretaker grounds (34:83-85; Pet-Ap. 208-10). On appeal, Matalonis did "not contest the officers' initial entry into his residence." Matalonis's Court of Appeals' brief at 16.

The lawfulness of the officers' initial entry into Matalonis's home is not at issue before this Court. *Matalonis*, slip op. ¶ 13 (Pet-Ap. 106). Rather, the focus is on whether the officers acted reasonably after they lawfully entered Matalonis's home. Said another way, did the officers actions inside the home fall within the scope of the community caretaker or protective sweep doctrines?[1]

---

[1] If this Court concludes that the officers lawfully entered the locked room, then the officers lawfully seized the items observed inside the room in plain view. "[U]nder the 'plain view' doctrine, an object falling within the plain view of an officer who rightfully is in a position to have that view is subject to valid seizure and may be introduced into evidence." *See State v. Carroll*, 2010 WI 8, ¶ 21, 322 Wis. 2d 299, 778 N.W.2d 1; *see also State v. Pinkard*, 2010 WI 81, ¶ 62, 327 Wis. 2d 346, 785 N.W.2d 592 (upholding the lawfulness of the seizure of items within plain view when officers' initial intrusion fell within the scope of the community caretaker exception).

II. Under the community caretaking doctrine, the officers acted reasonably when they searched the locked room for other persons who may have been injured in a fight at Matalonis's home.

A. Introduction.

The officers acted reasonably and within the scope of the community caretaker doctrine when they followed the blood trail inside Matalonis's home, looking for persons who may have been injured during a fight with Antony.

The circuit court agreed that the officers' search of Matalonis's home for potentially injured people fell within the community caretaking function (34:85-87; Pet-Ap. 210-12). 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; Pet-Ap. 212).

The court of appeals disagreed, holding that the search did not fall within the community caretaker exception. *Matalonis*, slip op. ¶ 37 (Pet-Ap. 116). It concluded that the officers lacked an objectively reasonable basis from which they could conclude that anyone inside the home was injured. *Id*. ¶ 25 (Pet-Ap. 112). It also determined that the

public interest in the intrusion was minimal and did not outweigh the substantial intrusion on Matalonis's privacy interests. *Id.* ¶ 36 (Pet-Ap. 116).

The State respectfully disagrees and submits that the record supports the circuit court's conclusion that the officers acted reasonably within the scope of the community caretaker doctrine.

B. General legal principles governing a protective sweep.

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. *Pinkard*, 327 Wis. 2d 346, ¶¶ 14, 22. "An officer exercises a community caretaker function 'when the officer discovers a member of the public who is in need of assistance.'" *Id.* ¶ 18 (quoted source 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.

Id. ¶ 29 (footnote omitted); *see also Kramer*, 315 Wis. 2d 414, ¶ 21, adopting the three-step test from *State v. Anderson*, 142 Wis. 2d 162, 169, 417 N.W.2d 411 (Ct. App. 1987).

Bona fide community caretaker function. Under the second question, a court must determine whether the officers were exercising a bona fide community caretaker function. Asked another way, did the officers have an objectively reasonable basis to believe that someone was hurt and needed assistance? In making this assessment, courts look to the totality of the circumstances at the time of the officers' conduct. *State v. Gracia*, 2013 WI 15, ¶ 17, 40, 345 Wis. 2d 488, 826 N.W.2d 87.

An officer may simultaneously perform a bona fide community caretaker function while engaging in other law enforcement functions. An officer may possess legitimate "law enforcement concerns, even when the officer has an objectively reasonable basis for performing a community caretaker function." *Kramer*, 315 Wis. 2d 414, ¶ 32. Accordingly, this Court has "rejected the contention that community caretaker functions must be totally independent from the detection, investigation, or acquisition of evidence relating to the commission of a crime." *State v. Blatterman*, 2015 WI 46, ¶ 44, ___ Wis. 2d ___, ___ N.W.2d ___ (citation omitted). An officer's subjective law enforcement concerns will not otherwise negate an objectively reasonable exercise of the community caretaker function. *Kramer*, 315 Wis. 2d 414, ¶ 30.

Whether the public interest outweighs the intrusion into a person's privacy interest. The third, "reasonable exercise" or balancing 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. ¶ 41 (citation, and quotations omitted). No single factor is determinative. *Gracia*, 345 Wis. 2d 488, ¶ 23. "'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).

When balancing the public's interest against the individual's privacy interest, a court considers whether the officers had less intrusive alternatives available to them. *Id.* ¶ 57. But a court should assess the feasibility of alternative options "in light of the exigency perceived by the officers." *Id.* ¶ 58.[2]

C. Officers acted reasonably and within the scope of their community caretaking function when they searched the locked room.

In Matalonis's case, the State readily concedes that the officer's entry into the locked room constituted a search for Fourth Amendment purposes. This Court must resolve: (1) whether the officers exercised a bona fide community

[2] In deciding Matalonis's case, the circuit court's analysis relied primarily on community caretaker grounds (34:85-86; Pet-Ap. 210-11). The circuit court also referenced the emergency doctrine, citing *State v. Larsen,* 2007 WI App 147, 302 Wis. 2d 718, 736 N.W.2d 211 (34:83-84; Pet-Ap. 208-09). The State is mindful of the distinction between the community caretaker exception and the emergency exception to the warrant requirement. *Pinkard*, 327 Wis. 2d 346, ¶ 26 n.8. But these distinctions are not always easily applied. The "distinctions between these . . . doctrines can be frail, bordering on the meaningless. Neither have they been consistently applied, thus creating contradictory and sometimes conflicting doctrines." *State v. Deneui*, 2009 SD 99, ¶¶ 22, 54, 775 N.W.2d 221 (court ultimately applies the community caretaking doctrine rather than emergency or emergency aid doctrine to justify warrantless entry because officers did not have actual information that someone was in need of assistance but the officers "acted justifiably for the welfare of possible persons inside the residence").

caretaker function; and (2) under the balancing test, whether the public interest in the search outweighed Matalonis's privacy interest such that the officers' exercise of the community caretaking function was reasonable.

1. The officers reasonably exercised a bona fide community caretaker function.

Officers Ruha and Yandel exercised a bona fide community caretaker function when they searched the locked room in Matalonis's home. The officers wanted to search Matalonis's home and the locked room to make sure that no one else had sustained injuries in the altercation that led to Antony's hospitalization. Based upon the record, the officers had an objectively reasonable basis to believe that someone in addition to Antony may have been hurt and needed assistance.

a. The officers' actions demonstrate that they were focused on looking for injured people.

Based upon the available information, the officers acted reasonably and out of a legitimate concern that another injured person may have been present inside Matalonis's home. The record demonstrates that the officers focused on looking for injured people.

When officers met Antony, he had been battered and beaten up (34:6, 41; Pet-Ap. 131, 166). Though intoxicated, Antony told the officers that "four different groups of people" beat him outside a bar. Later he stated that "four people" beat him outside a bar (34:7; Pet-Ap. 132). It would not be unreasonable for officers to conclude that other persons may have sustained injuries in the melee that resulted in Antony's injuries.

After an ambulance transported Antony to the hospital, officers decided to follow the blood trail to determine where Antony had come from and whether anyone else was involved (34:7; Pet-Ap. 132). Officers followed the blood trail through the snow to Matalonis's home and observed blood on his home's side door (34:7-8, 42-43; Pet-Ap. 132-33, 167-68).

While alongside the residence, Officer Ruha "heard two loud bangs coming from inside the residence" (34:8, 25; Pet-Ap. 133, 150). Officer Ruha stated that they "had no idea what was going on inside the residence" (34:8; Pet-Ap. 133). Based upon the presence of a significant amount of blood, officers were concerned that someone inside might be injured and believed it was necessary to enter the home to check on the welfare of someone inside (34:43; Pet-Ap. 168).

Matalonis opened the door. Though out of breath, he did not have any apparent injuries (34:8-9, 44; Pet-Ap. 133-34, 169). But the officers noticed additional blood on the foyer's floor and leading up the stairwell (34:44; Pet-Ap. 169). Officers explained to Matalonis that they needed to enter his home to make sure that no one else inside was injured (34:9-10, 44; Pet-Ap. 134-35, 169).

Upon entry, Officer Ruha "conducted a protective sweep . . . to make sure that no one else was inside the house or even injured . . . [who] needed medical attention" (34:11; Pet-Ap. 136). As Officer Ruha explained, "I don't know if anyone is injured inside the house or if there's an aggressor in the house" (34:37; Pet-Ap. 162).

As the circuit court found, the officers' actions inside the home were "not directed at finding evidence, but for protective search and for injured parties. The officers only searched where there was blood" (34:85-86; Pet-Ap. 210-11).

After checking the main floor, (34:11-12; Pet-Ap. 136-37), Officer Ruha proceeded to the basement. He did not see any blood in the basement (34:21, 27; Pet-Ap. 146, 152). Though Matalonis told officers he resided alone (34:10; Pet-Ap. 135), Officer Ruha encountered M.B., who resided in a basement room. Officer Ruha did not enter M.B.'s room, but briefly spoke to M.B. outside his room and then went upstairs (34:21, 27; Pet-Ap. 146, 152).

As he proceeded to the second floor, Officer Ruha observed "what appeared to be droplets of blood on the carpet and blood smeared all along the wall leading upstairs" (34:12; Pet-Ap. 137). Officer Ruha saw "blood all over the handrail" and a broken mirror's glass shards on the floor (34:12; Pet-Ap. 137). He then saw a door with a deadbolt that had blood spatter on it. Officer Ruha unsuccessfully attempted to open the locked door (34:12-13; Pet-Ap. 137-38). After completing the sweep of the second floor, Officer Ruha asked Matalonis for the key to the locked door for the purpose of ensuring no one was injured inside the locked room (34:14; Pet-Ap. 139).

Officer Ruha candidly acknowledged that he had no way of knowing whether anyone was behind the locked door. But it was also important for him to determine if anyone was injured behind the door (34:28; Pet-Ap. 153). When asked what "objectively, would lead [him] to believe someone was behind that door," Officer Ruha noted the droplets of blood around the door handle and that it could have been locked from the inside (34:29; Pet-Ap. 154). While the officers lacked any direct information that anyone was inside, they could not ignore the possibility that someone inside was injured.

Officers Ruha and Yandel did not have the benefit of time or hindsight when they decided to check the locked room. But they made reasonable judgments based upon conflicting facts that rapidly presented themselves to them.

While the majority may well disagree with the way that Officers Ruha and Yandel exercised their judgment, their judgment that someone may have needed assistance inside the locked room was nonetheless objectively reasonable. Both the circuit court and dissent recognized:

> [I]t was reasonable for [police] to extend their search for injured parties to [the locked room]. [W]ith someone who is bleeding, . . . 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 would not only be improper, it would be a sign of poor police work.

Matalonis, slip op. ¶ 43 n.2 (Pet-Ap. 120). Based upon the totality of the circumstances, the officers were engaged in a bona fide community caretaker function when they unlocked the door to a room in Matalonis's home.

b. Officers acted with a bona fide community caretaking purpose consistent with this Court's prior decisions extending community caretaking to homes.

The officers' actions are consistent with this Court's prior decisions finding that officers acted pursuant to a bona fide community caretaking function. The search of the locked room here is more compelling than the searches that this Court upheld on community caretaker grounds in *Pinkard* and *Gracia*.

In *Pinkard*, officers responded to an anonymous tip that individuals were sleeping inside a residence and that drugs were present. The officers went to the residence and found the door opened. After knocking and announcing their presence, the officers entered to check on the welfare of the

occupants. *Pinkard*, 327 Wis. 2d 346, ¶¶ 38-40. The officers had no reason to believe that anyone inside was actually injured or the victim of a crime. *Id.* ¶ 4.

Unlike *Pinkard*, Officers Ruha and Yandel rapidly developed information that Matalonis's home was the scene of a battery that resulted in serious injuries requiring medical treatment. Antony stated multiple persons had been involved. When Matalonis answered the door without any apparent injuries and the officers saw blood inside, the officers could reasonably believe that someone else may have been injured in the altercation. When the officers saw blood on the locked upstairs door, they had an objectively reasonable basis to believe that someone inside may have needed medical attention.

In *Gracia*, Gracia argued that the officers did not have an objectively reasonable belief that Gracia was injured. The police relied upon the significant damage to Gracia's car following an accident to determine that Gracia might have been hurt. *Gracia*, 345 Wis. 2d 488, ¶¶ 20-21. This court agreed that the significant damage to Gracia's car along with Gracia's brother's concern for Gracia supported the officers' reasonable belief that Gracia might need assistance. *Id.* ¶ 22. Here, and unlike *Gracia*, officers knew that at least one person had actually been injured inside the home. While Antony's statement contained inconsistencies, it was still reasonable for the officers to believe that someone else had been injured as well based upon the amount of blood in the residence and the glass shards near the locked door.

The officers' assessment was reasonable based on the circumstances that presented themselves at that time. *See State v. Ferguson,* 2001 WI App 102, ¶ 29, 244 Wis. 2d 17, 629 N.W.2d 788 (Schudson, J., dissenting) ("Lives depend on police 'erring,' if at all, on the side of safety for those desperately needing help, lying behind closed doors.").

c. *Maddix* and *Ultsch* are readily distinguishable from Matalonis's case.

In analyzing whether the officers were engaged in a bona fide community caretaker function, the majority relied upon *State v. Maddix*, 2013 WI App 64, 348 Wis. 2d 179, 831 N.W.2d 778, and *State v. Ultsch*, 2011 WI App 17, 331 Wis. 2d 242, 793 N.W.2d 505. *Matalonis, s*lip op. ¶¶ 24-25 (Pet-Ap. 111-12). In both cases, the court of appeals rejected the applicability of the community caretaking doctrine. The State does not take issue with how the court of appeals decided those cases. Rather, like the dissent, the State questions the majority's reliance on *Maddix* and *Ultsch* to resolve Matalonis's case.

In *Maddix*, officers responded to a domestic incident involving an argument between two people, who appeared to be the only persons in the apartment and did not appear injured. The officers were present in the apartment for twenty-five to thirty minutes before initiating a search. During that time, the officers had not become aware of any evidence that supported the idea of a third person's presence. 348 Wis. 2d 179, ¶ 28. Under the circumstances, the court of appeals reasonably concluded: (1) that the officers lacked an objectively reasonable basis from which to conclude that there was a bona fide need to render assistance; and (2) the public interest in furthering the search did not exceed Maddix's privacy interest. *Id.* ¶¶ 30-31.

Despite the apparent differences between the cases, the majority relied heavily upon *Maddix* in resolving Matalonis's case. As the dissent noted, any similarities between this case and *Maddix* are "mostly superficial and the differences [are] significant." *Matalonis, s*lip op. ¶ 39 (Pet-Ap. 117). The dissent highlighted the key differences between *Maddix* and Matalonis's case that weighed in favor of the application of the community caretaker doctrine.

- *Evident acts of physical violence?* In ***Maddix***, officers responding to a domestic disturbance call were presented with what was by all appearances a loud verbal dispute between two persons, with no signs of violence. ***Id.***, ¶¶2-10, 28-29.

  In contrast, in this case, officers responding to a medical call were presented with what by all appearances was an incident involving recent, serious physical violence. Matalonis's heavily bloodied brother, Antony, was taken away in an ambulance.

- *Conflicting accounts of the violence?* In ***Maddix***, both interviewees gave statements that were apparently not only internally consistent but also consistent with each other, to the effect that nothing violent was afoot, and the incident involved only an argument between the two of them. The two witnesses appeared to account for all pertinent evidence, such as who in the apartment had screamed within hearing of the officers. ***Id.***, ¶¶5-6, 29.

  Here, officers were given two sharply contrasting versions of what the violence had involved. The first witness interviewed told police that he had received his injuries at the hands of a group of individuals, while Matalonis said that only the two of them had fought.

- *Consented entry to residence*? In ***Maddix***, officers forced open a locked back door of Maddix's two-flat house, and, when Maddix responded to a knock on the door of his unit, grabbed his arm and ordered him to "stay right there." ***Id.***, ¶4.

  Here, Matalonis does not challenge the circuit court finding that Matalonis consented to the officers entering the house.

- *Timing*? In ***Maddix***, we concluded that it was significant that "the officers were present in the apartment for twenty-five to thirty minutes prior to initiating the search of the rooms in the apartment." ***Id.***, ¶¶28, 33.

  Here, Matalonis does not challenge the circuit court finding that one of the officers conducted an immediate, brief search of the rooms of the house for any injured

person, focusing only on locations where blood suggested that a person might be found.

- *Evidence of an unknown, potentially injured person?* In ***Maddix***, there was nothing to suggest that any person was in the room searched, and there was "virtually no" evidence that any person other than Maddix and the female might be located anywhere in the apartment. *See* ***id.***, ¶¶8, 28. We explained in ***Maddix*** that the "primary basis" for the search there was that the officers were "'not satisfied' with the female's explanation as to why she screamed," but there was nothing about her screaming, nor any other evidence, to suggest that any third party might have been involved in the incident. ***Id.***, ¶¶18, 26-30. Put differently, there was no evidence supporting a suspicion that the inadequately explained scream involved any persons other than the female and Maddix.

  Here, officers were given one account that the violence involved five or more persons. Officers then observed blood at the residence and, as the search progressed, physical evidence pointing to the reasonable possibility of an injured person behind the locked door: blood smeared along the wall leading upstairs and on the handrail; a broken mirror, seeming to confirm violence occurring within the house; and blood droplets on the door of a second floor room, which was locked.

Matalonis, slip op. ¶ 39 (Pet-Ap. 117-19). Contrary to the majority's view, *Maddix* has limited applicability to Matalonis's case. In fact, the significant factual differences that the dissent identified strongly support the conclusion that the officers could objectively and reasonably believe that a potentially injured person was in the locked room. *Matalonis*, slip op. ¶ 40 (Pet-Ap. 119).

The majority also misplaced its reliance on *Ultsch,* 331 Wis. 2d 242. In *Ultsch*, officers located the damaged vehicle that had been involved in a hit and run accident. *Id.* ¶ 2. A man indicated that his girlfriend was the vehicle's operator and that she was in the house, possibly in bed or asleep. Officers entered the home and found Ultsch asleep in a bedroom. *Id.* ¶¶ 3-5.

In *Ultsch*, the court of appeals declined to apply the community caretaker doctrine because the officers lacked any reasonable basis to conclude that Ultsch needed assistance. *Id.* ¶ 22. The vehicle's limited damage "was not such as to give rise to concern for Ultsch's safety." *Id.* ¶ 19. No one had told the officers that Ultsch had been injured. The officers never asked her boyfriend whether she needed assistance. Finally, officers 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.

Matalonis's case is readily distinguishable from *Ultsch*. In *Ultsch*, the officers conducted a warrantless entry, which the court of appeals noted is "subjected to stricter scrutiny." *Id.* ¶ 18. But unlike *Ultsch*, Matalonis actually consented to the officers' entry into his home (34:83, 85; Pet-Ap. 208, 210). Unlike *Ultsch*, the physical evidence supported the officers' reasonable belief that a fight actually occurred inside Matalonis's home with at least one other person. 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's home. As the dissent noted, it was not feasible to determine the blood's source; "the officers had to make immediate decisions based on evidence that included Antony's statements." *Matalonis*, slip op. ¶ 47 (Pet-Ap. 122). Unlike *Ultsch*, the circumstances here give rise to the officers' reasonable belief that an injured party could be behind the door that had blood droplets on it. *Ultsch* simply does not support the majority's position that the search here was unreasonable.

2. The public interest in the search outweighed any intrusion upon Matalonis's privacy.

Should this Court find that the officers acted with a bona fide community caretaker purpose, the Court must decide whether the public interest in the officers' search of

the locked room outweighed any intrusion to Matalonis's privacy interests. A proper balancing of the relevant considerations weighs in favor of the officers' actions. Those considerations include: (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; and (3) the availability, feasibility and effectiveness of alternatives to the type of intrusion actually accomplished. *Kramer*, 315 Wis. 2d 414, ¶ 42.[3]

The degree of the public interest and the exigency of the situation. The majority concluded that the intrusion upon Matalonis's privacy interest outweighed the public interest in the search. *Matalonis*, slip op. ¶ 36 (Pet-Ap. 116). Relying upon *Maddix* and *Ultsch*, the majority determined that the public interest was minimal because nobody had expressed concern for the welfare of another individual. *Id.* ¶ 32 (Pet-Ap. 114). But in *Maddix* and *Ultsch*, the officers had no reason to believe that a physical altercation had occurred, much less that anyone was injured.

Here, Antony sustained injuries that led to extensive bleeding and required medical treatment. At Matalonis's home, officers observed blood leading up the stairway and broken glass outside the locked room. They also noted blood on the locked door. Matalonis and Antony may have provided conflicting versions of events regarding the fight's location and the number of perpetrators. Officers should not be required to choose between conflicting versions as they rapidly assess a dynamic situation. Under the circumstances, the public had a compelling interest in verifying that no one else needed medical assistance.

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[3] An additional factor relates to whether an automobile was involved. That factor is not relevant to this case.

The attendant circumstances surrounding the search, including time, location, the degree of overt authority and force displayed. In assessing the attendant factors, the majority concluded that the authority and force that the officers displayed was considerable. *Matalonis*, slip op. ¶ 33 (Pet-Ap. 115). Again, the State disagrees. Unlike *Maddix* and *Ultsch*, the officers here entered the residence with consent and without force. Officer Yandel remained with Matalonis in the living room while Officer Ruha conducted a protective sweep. The officers did not threaten Matalonis, handcuff him, or display weapons. They only searched areas that had signs of blood and they only searched spaces that could have people in them. As the dissent noted, "the intrusions were reasonably limited . . . and the degree of overt authority and force displayed matched the public safety purposes." *Matalonis*, slip op. ¶ 46 (Pet-Ap. 121-22).

Officers only threatened the use of any force after Officer Ruha completed much of the search. He told Matalonis that he would kick the locked door open unless Matalonis provided the key. Officer Ruha explained to Matalonis that he wanted to enter the room to determine that no one inside was injured. *Matalonis*, slip op. ¶ 6 (Pet-Ap. 104). Officer Ruha's description of the force he would direct towards the door if Matalonis did not provide the key was reasonable in light of his concern that an injured person might have been in the locked room.

The availability, feasibility and effectiveness of alternatives to the type of intrusion actually accomplished. The majority suggests that the officers had additional alternatives. While recognizing that the officers did not have to accept Matalonis's answers at face value, the majority suggests that the officers could have questioned Matalonis further. *Matalonis*, slip op. ¶ 35 (Pet-Ap. 115-16). In suggesting that the officers could have questioned Matalonis further, the majority discounted Officer Ruha's observation that: "When we go to places, people aren't always honest with us in telling us who's in the house and who's not in the

house" (34:37; Pet-Ap. 162). And in this case, Matalonis initially told officers that he lived alone (34:10; Pet-Ap. 135; Ex. 37:S-4 at 3). But a witness at the scene of the original complaint informed the officers that Antony lived with his brother (34:7; Pet-Ap. 132); and during their sweep, officers also located M.B. residing in a basement room (34:21, 27; Pet-Ap. 146, 152).

Due to the officers' concern regarding the potential that others may have been injured, other alternatives may not have been viable. "[G]iven that someone might have been significantly injured, the officers could have concluded that they did not have a reasonable, viable alternative, consistent with public safety, to making a prompt search of the house, including entry to the locked room." *Matalonis*, slip op. ¶ 46 (Pet-Ap. 121-22). *See Pinkard*, 327 Wis. 2d 346, ¶ 59 (citation and internal quotations omitted) (In assessing reasonableness, courts should ask "whether the officers would have been derelict in their duty had they acted otherwise. . . . [Had the officers acted otherwise,] the citizens of the community would have understandably viewed the officers' actions as poor police work.").[4]

As the dissent noted, the officers reasonably limited their intrusions in terms of time and space. The officers limited their search for injured persons. The degree of overt authority and force displayed matched the public safety purposes. *Matalonis*, slip op. ¶ 46 (Pet-Ap. 121-22). Under the circumstances, the public interest in having officers search behind a locked door with blood on it for other

[4] "On the other hand, there are times when lives may be in jeopardy if officers hesitate to act in potentially hazardous situations, and the key question here is whether there were sufficient reasons to act." *Deneui*, 775 N.W.2d 221, ¶ 42. And "'[i]t must be emphasized that the fact that, as it turned out, no one was injured is of no moment.'" *Pinkard*, 327 Wis. 2d 346, ¶ 59, (quoting *State v. Hedley*, 593 A.2d 576, 582 (Del. Super. Ct. 1990)).

persons who may have been injured at the scene of a violent battery outweighed any intrusion into Matalonis's privacy interest in the locked room.

For the above reasons, the State respectfully requests this Court to find that the officers' search of the locked room constituted a reasonable exercise of their community caretaker function.

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

A. Introduction.

In addition to the community caretaker doctrine, the protective sweep doctrine also supports the officers' search of Matalonis's home, including the locked room, for people. The circuit court noted the officers' legitimate concerns regarding the potential for danger from others as they investigated Antony's battery. "[T]hey don't know if they're going to find four guys home from the bar that are there" (34:85; Pet-Ap. 210).

The court of appeals dismissed these concerns. While recognizing that it was "certainly possible that other individuals were involved in the fight and were in Matalonis's residence," the officers lacked an objectively reasonable basis to believe that their safety was at risk. *Matalonis*, slip op. ¶ 29 (Pet-Ap. 113). The State respectfully disagrees.

B. General legal principles governing a protective sweep.

In *Maryland v. Buie*, 494 U.S. 325 (1990), the United States Supreme Court established the protective sweep exception to the warrant requirement. Once an officer has lawfully entered an area, including a home, the officer may

conduct a protective sweep. The 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 (citation omitted) (footnote omitted).

A protective sweep is limited in scope to those places where a person may be found and may last no longer than necessary to dispel reasonable suspicion. *Buie*, 494 U.S. at 335-36; *Sanders*, 311 Wis. 2d 257, ¶ 33. 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, 1016-18 (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*, the court of appeals 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.

While protective sweeps often occur in the context of an arrest, the "protective sweep" doctrine is not limited to situations in which an arrest has been made. *See United States v. Starnes*, 741 F.3d 804, 810 (7th Cir. 2013) (a protective sweep's constitutionality "does not depend on whether that sweep is incidental to a search warrant, an arrest warrant, or a consensual search"). Courts have upheld protective sweeps in other contexts when officers are otherwise lawfully on the premises. Officers may also conduct a protective sweep in conjunction with a warrantless entry pursuant to a community caretaker exception. *State v. Horngren*, 2000 WI App 177, ¶ 20, 238 Wis. 2d 347, 617 N.W.2d 508. Likewise, courts have upheld protective searches of residences when officers have lawfully entered a

residence through consent. *See United States v. Gould,* 364 F.3d 578, 587 n.9, 588-90, *abrogated on other grounds by Kentucky v. King*, ___ U.S. ___, 131 S. Ct. 1849 (2011) (allowing protective sweep pursuant to consent entry); *United States v. Garcia,* 997 F.2d 1273, 1282 (9th Cir. 1993) (officers permitted to conduct protective sweep following a consent entry).

In assessing a protective sweep's reasonableness, the court of appeals has previously 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.

C. The officers' search of the locked room fell within the scope of the protective sweep doctrine.

In Matalonis's case, the question is whether, under the totality of the circumstances, the officers reasonably believed that a protective sweep of the locked room was necessary to assure the safety of the officers and other people while the officers investigated the battery to Antony.

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; Pet-Ap. 210). Judge Warren's finding was not clearly erroneous and the record supports the reasonableness of the officers' actions.

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 (34:7; Pet-Ap. 132). Officers followed the blood trail to the side door of Matalonis's home. Officer Ruha saw blood on the door handle and heard two loud bangs coming from inside (34:8; Pet-Ap. 133). Officers knocked on the door and Matalonis answered it (34:8-9; Pet-Ap. 133-34).

Matalonis was shirtless. He did not appear to have any injuries, but appeared out of breath (34:9; Pet-Ap. 134). Officers explained why they were there and asked for permission to enter Matalonis's house. Matalonis let them in (34:9-10; Pet-Ap. 134-35). Matalonis initially told the officers that he lived alone (34:10; Pet-Ap. 135), but this appeared to contradict information from a citizen who had previously told the officers that Antony lived with his brother (34:7; Pet-Ap. 132).

Once inside, Officer Ruha "conducted a protective sweep of the house to make sure that no one else was inside the house . . ." (34:11; Pet-Ap. 136). He did not know if an aggressor was still inside (34:37; Pet-Ap. 162). Officer Ruha checked the living room and kitchen where he observed a couple of drops of blood (34:11-12; Pet-Ap. 136-37). He checked the basement area but did not observe any blood (34:12, 27; Pet-Ap. 137, 152). But he did encounter M.B., who resided in a basement room. After speaking with M.B., Officer Ruha proceeded upstairs to check the first floor and upstairs (34:21, 27; Pet-Ap. 146, 152).

On the second floor, Officer Ruha encountered a door secured with a deadbolt. The door had blood spatter on it. He could not open it. After checking the bathroom to make sure no one was inside, Officer Ruha went downstairs to speak to Matalonis (34:12; Pet-Ap. 137). Officer Ruha asked

Matalonis for the key to the locked door because Officer Ruha "wanted to get in there for a protective sweep" (34:33; Pet-Ap. 158).

Here, the officers could reasonably believe based upon specific and articulable facts that other persons might be present inside Matalonis's home who posed a danger to them and others as they investigated the battery.

The majority relied upon two factors in determining that the evidence did not provide the officers with an objectively reasonable basis to believe that their safety was at risk. *Matalonis*, slip op. ¶ 29 (Pet-Ap. 113). First, the officers determined that Antony had been battered at Matalonis's house, rather than outside a bar.[5] Second, Matalonis told the officers that he battered Antony and that he lived alone. *Id*. ¶ 29 (Pet-Ap. 113).

To be sure, Antony and Matalonis provided conflicting accounts regarding who beat Antony and where Antony was beaten. But during the investigation's preliminary stages, officers need not have accepted Matalonis's representation regarding the circumstances surrounding the fight, including the number of persons involved, or whether other people resided at Matalonis's residence. 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; Pet-Ap. 162).

In rejecting the applicability of the protective sweep doctrine, the majority relied upon Matalonis's representation that he lived alone. *Matalonis*, slip op. ¶ 29 (Pet-Ap. 113; Ex. 37:S-4 at 3). While Matalonis told the officers that he lived

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[5] Matalonis told Officer Ruha that Antony tried to fight with him outside of a bar, but that they actually fought at the home (34:17-18; Pet-Ap. 142-43).

alone (34:10; Pet-Ap. 135), the officers could reasonably question this claim. First, before the officers traced the blood trail to Matalonis's home, a person informed Officer Ruha that Antony lived down the street with his brother (34:7; Pet-Ap. 132). Second, as Officer Ruha swept through the basement, he encountered M.B., who resided in the basement (34:21, 27; Pet-Ap. 146, 152). Under the circumstances, it was certainly reasonable for the officers to assess whether other persons might be present who posed a potential threat as the officers determined whether anyone else had been injured and they investigated the battery.

The majority's analysis implicitly assumes that Matalonis was: (a) telling the truth about being Antony's only assailant; and (b) the officers had reason to know Matalonis was telling the truth. But asking the officers to make these judgments as information rapidly presents itself is the type of second guessing that courts have cautioned against in assessing reasonableness. *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).

The circuit court recognized that Antony may have lied about how he sustained his injuries. But it also recognized that Antony had suffered significant injuries and a considerable loss of blood (34:84; Pet-Ap. 209). Unlike the court of appeals, the circuit court appreciated the uncertainty facing the officers. It did not impose upon the officers an obligation to immediately accept at face value the truthfulness of Matalonis's statements. The circuit court appreciated the officers' legitimate concern in not only checking for other injured persons, but also for other potential aggressors (34:85; Pet-Ap. 210). Based upon the circumstances, the circuit court appropriately found that the officers' search constituted a valid protective sweep (34:89; Pet-Ap. 214).

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 Officer Ruha's reasonable belief that someone may have been hiding in the locked room who posed a danger to the officers and others as they investigated the battery. Certainly, nothing prevents officers from acting in a manner that minimizes property damage while conducting a protective sweep. Officer Ruha's request for the key to the locked room merely demonstrated the reasonableness of the officers' actions as they investigated the battery to Antony that had occurred at a home that Matalonis shared with others.

For the same reasons that the circuit court relied upon, the State respectfully requests this court to find that the court of appeals erred when it declined to apply the protective sweep exception to the facts of this case.

CONCLUSION

The State respectfully requests this Court to reverse the court of appeals' decision reversing the circuit court's order denying Matalonis's motion to suppress evidence.

Dated this 2nd day of June, 2015.

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 9,165 words.

Dated this 2nd day of June, 2015.

_____
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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 2nd day of June, 2015.

_____
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APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with Wis. Stat. § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

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