**STATE OF WISCONSIN**
**I N S U P R E M E C O U R T**

Case No. 2014AP000108 - CR

STATE OF WISCONSIN,
Plaintiff-Respondent-Petitioner,

v.

CHARLES V. MATALONIS,
Defendant-Appellant

ON REVIEW OF THE COURT OF APPEALS DECISION REVERSING AND REMANDING WITH DIRECTIONS THE JUDGMENT OF THE CIRCUIT COURT FOR KENOSHA COUNTY BY THE HONORABLE WILBER W. WARREN, III

# RESPONSE BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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**IN SUPREME COURT**

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# RESPONSE BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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## STATEMENT OF ISSUES

Whether, after entering Matalonis's home and speaking with Matalonis, the officers were justified in conducting a search of the residence?

The trial court answered this question in the affirmative. (34:84-87, 89; R-App. 186-89, 191).

The court of appeals reversed the trial court and remanded the matter with instructions to suppress the evidence resulting from the warrantless search. State v. Matalonis, No. 2014AP108-CR, slip op. ¶ 37 (Wis. Ct. App. Dec. 23, 2014) (R-App. 193-215).

## STATEMENT ON ORAL ARGUMENT AND PUBLICATION

By granting the State's petition for review, this Court has indicated that oral argument and publication would be appropriate concerning the above issue presented.

## STATEMENT OF THE CASE

The Defendant-Appellant (hereafter Matalonis) filed a motion before the trial court to suppress evidence seized during a search of his residence. Three witnesses testified at the motion hearing—Officer Brian Ruha, Officer David Yandel, and Matalonis. (R. 34: 2; R-App. 104).

Officers Brian Ruha and David Yandel initially responded to a "med call" at 510 45th Street, which was not Matalonis' residence. (R. 34: 6, 41-42; R-App. 108, 143-44). They met with Matalonis' brother, Antony, who appeared intoxicated as well as battered and covered in blood on his right side. (R. 34: 6, 41; R-App. 108, 143). Antony indicated that four people beat him up outside "Paddy O's" bar. (R. 34: 7; R-App. 109). The responding rescue squad took Antony to the hospital. (R. 34:7, 41; R-App. 109, 143). Despite Antony's statements, Officer Ruha claimed, "We didn't know where he came from, where it originated from and *if anyone else was even involved*." (R. 34:7; R-App. 109) (emphasis added).

After meeting with Antony, the officers followed a trail of blood on the snow from 510 45th Street to Matlonis's residence at 4418 5th Avenue. (R. 34: 7-8, 42; R-App. 109-10, 144). The officers did not locate any other blood trails other than the one produced by Antony. (R. 34: 23, 49-51; R-App. 125, 151-53). They observed blood on the side door of the residence and heard bangs and noises coming from inside. (R. 34: 8, 25, 43; R-App. 110, 127, 145). The bangs were not gunshots, and Yandel admitted that the noises inside the house sounded like "[t]hings being shuffled around in the house." (R. 34: 8, 25, 43, 50; R-App.

110, 127, 145, 152). After calling for backup, they instead proceeded to the front door of the residence. (R. 34; 9, 43; R-App. 111, 145).

The officers knocked on the front door, and Matalonis opened it. (R. 34: 9; R-App. 111). Matalonis admitted to the officers that he had fought his brother, Antony, who had left the residence. (R. 34: 19, 24, 44, 50, 62-63; R-App. 121, 126, 146, 152, 164-65). Matalonis also indicated that he lived alone. (R. 34:10; R-App. 112). Specifically, Matalonis stated, "Yeah, my brother left already. It was just me and my brother fighting. I just had to do what I had to do to defend myself but he's gone now …." (R. 34:50; R-App. 152). Although Matalonis was "out of breath," he did not appear injured. (R. 34: 9, 44; R-App. 111, 146). The officers insisted they enter the residence over Matalonis' objections after they explained wanting to make sure no one was injured. (R. 34: 9, 44, 63; R-App. 111, 146, 165). Matalonis had been cleaning up—the officers acknowledged seeing a bucket and mop in the residence. (R. 34: 25, 52, 62, 64; R-App. 127, 154, 164, 166). The officers could see blood on the floor of the foyer and inside the residence. (R. 34: 44; R-App. 146). Instead of allowing Matalonis to continue cleaning, the officers entered the residence and ordered Matalonis to remain on the couch. (R. 34: 11, 26, 44, 52, 63-64, 68, 72-73; R-App. 113, 128, 146, 154, 165-66, 170, 174-75). They did not handcuff him or advise him he was "under arrest." (R. 34: 11; R-App. 113).

While Officer Yandel stayed next to Matalonis, Officer Ruha conducted a community caretaker sweep of the residence, "to make sure that no one else was inside the house or even injured in the house that needed medical attention." (R. 34: 11; R-App. 113). Ruha and Yandel acknowledged that they never had information of a second individual being injured, the only reported injury was Matalonis' brother, Antony. (R. 34: 23-24, 35, 37, 50; R-App. 125-26, 137, 141, 152). When pressed on his "concerns regarding people possibly in the home," Ruha

responded "I don't know if anyone is injured inside the house or if there's an aggressor in the house. We have no idea." (R. 34: 37; R-App. 139). Neither Yandel nor Ruha testified that Matalonis consented to them conducting the sweep of the residence. (R. 34).

During the first part of the sweep, Ruha located "a couple drops of blood" in the living room, kitchen, and the stairs to the second floor. (R. 34: 11-12; R-App. 113-14). Going upstairs, Ruha testified that he observed some blood on the handrail as well as on the upstairs wall, a broken mirror, and two little drops of blood on a locked door. (R. 34: 12, 34; R. 37: State's Exhibit 2; R-App. 114). Moreover, Ruha recognized that two drops of blood on the door was "the least amount of blood anywhere in the house." (R. 34:34; R-App. 136). Ruha did not locate anyone in the living area upstairs or the bathroom, nor did he hear any noises or cries for help. (R. 34: 12; R-App. 114). Ruha "did smell a strong odor of marijuana coming through this [locked] door and [] heard a fan running." (R. 34: 28; R-App. 130). Ruha admitted he had no information that anybody was "bleeding out" behind the locked door. (R. 34: 35; R-App. 137). The lengthy sweep took Ruha about ten to fifteen minutes. (R. 34: 65; R-App. 167).

Rather than immediately force open the locked door, Ruha returned downstairs to confront Matalonis about the locked door. (R. 34: 14; R-App. 116). Ruha threatened Matalonis to either provide him the key to the locked door or they would kick the door in. (R. 34: 14, 30, 54, 65; R-App. 116, 132, 156, 167). Matalonis told Ruha that the room was full of security cameras for his house, but Ruha insisted that he either provide the key or they would kick in the door. (R. 34: 14-15, 30, 46, 54, 65; R-App. 116-17, 132, 148, 156, 167). Matalonis did not consent to Ruha entering the room, but Ruha found the key and entered the locked room. (R. 34: 15, 30-31, 55-57, 65-68; R-App. 117, 132-33, 157-59, 167-70).

When Officer Ruha entered the locked room, he did not locate any persons, injured or otherwise. (R. 34: 16; A-App. 118). He did locate "a large marijuana plant." *Id*. Ruha noted that he observed other drug paraphernalia on the second-floor living room area, such as pipes, smoking utensils, and a water bong. (R. 34: 16-17, 27; R-App. 118-19, 129). When Ruha finished searching the now-unlocked room, he returned to further interview Matalonis about the altercation with his brother Antony. (R. 34: 17-18; R-App. 119-20). Ruha only attempted to obtain a search warrant after they entered the locked upstairs room. (R. 34: 34-35, 37; R-App. 136-137, 139).

The court denied Matalonis' motion to suppress at the conclusion of testimony and after hearing the parties' arguments. (R. 34; 83-89; R-App. 185-91). Matalonis subsequently entered a no contest plea to delivering/manufacturing four plants of marijuana. (R. 35.) The court sentenced Matalonis to 18 months' probation. (R. 36.) Matalonis filed a timely notice of intent to seek post-conviction relief and a timely notice of appeal. (R. 31, 33). The court of appeals reversed the trial court, holding that neither the community caretaker exception nor protective sweep doctrine justified the officers' search of Matalonis's residence. State v. Matalonis, No. 2014AP108-CR, slip op. ¶ 37 (Wis. Ct. App. Dec. 23, 2014) (R-App. 193-215). The State filed a petition for review before this Court, which the court granted. The following argument responds to the State's Brief in Chief.

## ARGUMENT

I. THE COURT OF APPEALS CORRECTLY DETERMINED THAT THE OFFICERS WERE NOT JUSTIFIED IN CONDUCTING A SEARCH OF MATALONIS'S RESIDENCE AFTER ENTERING MATALONIS'S HOME AND SPEAKING WITH HIM.

### A. The community caretaker exception to the warrant requirement did not justify the officers' search of Matalonis's home.

#### 1. Appellate standard of review of motions to suppress evidence.

"When reviewing the denial of a motion to suppress evidence, [the appellate court] uphold[s] the circuit court's findings of fact unless clearly erroneous." State v. Maddix, 2013 WI App 64, ¶ 12, 348 Wis. 2d 179, 831 N.W.2d 778 (citations omitted). "[T]he application of constitutional principles to facts is a question of law that we review de novo." Id. (citations omitted). Accordingly, this court should "independently review whether an officer's community caretaker function satisfies the requirements of the Fourth Amendment and Article I, Section 11 of the federal and state Constitutions." Id. (citations omitted).

#### 2. Community caretaker exception to the warrant requirement in Wisconsin.

"The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution prohibit unreasonable searches and seizures." Maddix, 2013 WI App 64 at ¶ 13. (quotations and citations omitted). The State bears the burden of establishing that a search is reasonable by clear and convincing evidence. State v. Kramer, 2009 WI 14, 315 Wis. 2d 414, 759 N.W.2d 598. Warrantless searches are considered *per se* unreasonable under the Fourth Amendment, subject to a few well-delineated exceptions. Maddix, 2013 WI App 64 at ¶ 13 (quotations and citations omitted). Accordingly, "[t]he State has the burden of establishing that a warrantless entry into a home occurred pursuant to a recognized exception to the warrant requirement." Id. (citation omitted).

The "community caretaker doctrine" provides one such exception to the warrant requirement. "When acting as

a community caretaker, an officer may conduct a search or seizure without probable cause or reasonable suspicion (or a warrant), as long as the search or seizure satisfies the reasonableness requirement of the Fourth Amendment." Maddix, 2013 WI App 64 at ¶ 14 (citing State v. Kelsey C.R., 2001 WI 54, ¶34, 243 Wis. 2d 422, 626 N.W.2d 777). "[T]he warrantless entry of a residence is more suspect and subject to stricter scrutiny than entry and search of a motor vehicle. Id. at ¶ 15 (citing State v. Ultsch, 2011 WI App 17, ¶18, 331 Wis. 2d 242, 793 N.W.2d 505). Wisconsin courts apply a three-part test to determine whether an officer's conduct properly falls within the scope of the community caretaker exception. Id. at ¶ 16 (citing State v. Pinkard, 2010 WI 81, ¶ 29, 327 Wis. 2d 346, 785 N.W.2d 592). Specifically, the court assesses:

> (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.

3. The court of appeals correctly framed the search as a single search of Matalonis's home.

The court of appeals correctly framed the issue as "whether, after entering Matalonis' home and speaking with Matalonis, officers were justified in conducting a search of the residence." Matalonis, slip op. ¶ 13 (R-App. 198-99). Neither party disputes that Matalonis consented to the officers entering his home to discuss Antony's injuries. Moreover, neither party disputed that the officers searched Matalonis' residence. Id. at ¶ 14 (R-App. 199). Where no additional motivation for searching an overlooked room surfaced *and* the room would have been included in the

search had it not been overlooked, the Court should consider the search as a continuation of the search, not separately. State v. Maddix, 2013 WI App. 64, ¶ 18.

The officers' search of Matalonis's residence was one single search, despite the additional steps taken to access the upstairs, locked room. On one hand, the upstairs, locked room was part of the overall search despite the brief break to obtain a key to open the door. The officers' made clear that their search included all areas where they located blood. (R. 34: 11-13, 21; R-App. 113-15, 123). Although the locked, upstairs room had only two drops of blood on it, Officer Ruha confirmed that he intended to search that room for persons needing assistance. (R. 34: 14; R-App. 116). Accordingly, Officer Ruha would have immediately searched the room he did the other areas where he observed blood had it not been locked. State v. Maddix, 2013 WI App. 64, ¶ 18.

On the other hand, the only additional motivation in searching the upstairs, locked room that surfaced during the officers' search of Matalonis's residence was the odor of marijuana. (R. 34: 28; R-App. 130). Neither officer testified that the amount of blood they observed gave reason to believe that more than one person had sustained injuries. (R. 34; R-App. 103-92). In fact, the door had *less* blood on it than other area in the house. (R. 34: 34; R-App. 136). Accordingly, finding some blood on the door gave the officers no more reason to search the locked door than they had at the moment when they started the search. Moreover, they also heard no noises or sounds indicating that someone was inside the locked room. (R. 34: 12; R-App. 114). Taken together, this Court should follow the court of appeals and Maddix in analyzing the "objective reasonable basis" to search Matalonis's residence at the point when they enter the residence and ask Matalonis about his brother Antony's injuries. Matalonis, slip. Op. ¶ 13; R-App. 198-99; 2013 WI App. 64, at ¶ 18.

4. The court of appeals correctly held that the officers did not exercise a "bona fide community caretaker function" to justify their search of Matalonis's residence.

The court of appeals correctly looked to the following four Wisconsin cases to determine whether the police were exercising a bona fide community caretaker function: State v. Maddix, 2013 WI App 64, 348 Wis. 2d 179, 831 N.W.2d 778; State v. Gracia, 2013 WI 15, 345 Wis. 2d 488, 826 N.W.2d 87; State v. Ultsch, 2011 WI App 17, 331 Wis. 2d 242, 793 N.W.2d 505; and State v. Pinkard, 2010 WI 81, 327 Wis. 2d 346, 785 N.W.2d 592; Matalonis, slip op. ¶¶ 15-21; R-App. 199-202. From these four cases, the court of appeals established that whether the police were engaged in a "bona fide community caretaker function" depended on whether the officers had an "objectively reasonable basis to believe there was a member of the public who was in need of assistance." Court of appeals decision, ¶ 15 (quoting Ultsch, 2011 WI App 17 at ¶ 15); R-App. 199. Put differently, the officers must have reason to believe (a) a person exists within the place to be searched and (b) the person within the place is in need of assistance.

In Pinkard, the Wisconsin Supreme Court found that officers had an objectively reasonable basis to enter a residence where:

- A caller informed officers that two people appeared to be sleeping next to cocaine, money, and a digital scale;
- The outside door to the residence was three-quarters open;
- Nobody responded when the officers knocked on the door and announced their presence.

2010 WI 81 at ¶¶ 2-4. The caller identified the two people within the residence as well as the need for assistance—that they overdosed on illegal drugs. Id. at ¶¶ 33, 35. Nonetheless, the Court characterized these facts as a "close case." Id.

Similarly, in Gracia, the Wisconsin Supreme Court upheld officers' exercise of the community caretaker function, finding an objectively reasonable basis where:

- Officers observed significant damage to Gracia's vehicle (a mangled license plate) and the traffic signal that she struck with her vehicle;

- Gracia's brother's concern for her well-being and decision to force open the bedroom door.

2013 WI 15, at ¶¶ 21-22. The person within the place to be searched was Gracia, and her brother had established the "need for assistance" by expressing his concerns about her.

By contrast, in Ultsch, the Court of Appeals found the officers entry into a residence was *not* supported by an objectively reasonable basis where:

- Officers were responding to a car accident;

- Officers located the unoccupied but damaged vehicle at the end of Ultsch's driveway;

- Officers spoke with the Ultsch's boyfriend, who confirmed that she was inside the residence sleeping;

- Officers attempted to make contact with Ultsch after her boyfriend left the residence but received no response;

- Officers located no evidence of any bodily injury.

2011 WI App 17, at ¶¶ 2, 4-5, 19-21. Although Ultsch was identified as a person within the place to be searched, no evidence suggested that Ultsch was in need of assistance—no evidence of injury existed and the boyfriend indicated that Ultsch was inside sleeping without expressing concern for her safety. Id.

Finally, the Maddix court applied these three cases and held that officers lacked an "objectively reasonable basis" to enter the closed, dark room where:

- Officers were responding to a domestic disturbance call;
- Officers heard screaming from inside the residence when they arrived;
- Maddix and the woman were the only persons who appeared to be in the apartment;
- Officers were not satisfied with the woman's explanation for screaming;
- No other evidence suggested that another person was present in the apartment, such as noises, nervous behavior, or statements implying that another person was present;

2013 WI App 64, at ¶¶ 26-29.

Unlike the previous three cases, the Maddix court determined that the officers lacked an objectively reasonable basis that *both* (a) a person within the place to be searched, much less (b) the non-existent person was in need of assistance. Id. at ¶ 27. The court differentiated between the *possibility* of a third individual in the apartment with an objective reasonable basis to suspect that a third individual was inside the apartment. Id. Taken together, the Maddix court found that the officers lacked an objectively reasonable basis to conclude that there is a need

to render assistance, even if the officers' credibly testified that they had a subjective belief of such. Id. at ¶ 30. Overall, the court warned that allowing the community caretaker exception to justify the protective sweep in Maddix's case would "justify virtually any 'sweep' as part of a police response to an alleged domestic disturbance." Id. at ¶ 37.

Here, the court of appeals correctly determined that Matalonis' case aligned with Maddix as well as Ultsch, both of which the State agrees[1] were correctly decided, as opposed to Pinkard and Gracia. Matalonis, slip op. ¶¶ 22-25; R-App. 202-04. The facts in Matalonis's case are quite similar to Maddix:

- Both cases involved motions to suppress evidence of illegal drugs—tetrahydrocannabinols. Maddix, 2013 WI App 64 at ¶1; (R. 1).

- In both cases, the officers responded to a domestic disturbance at a residential property. Maddix, 2013 WI App. 64 at ¶2; (R. 34: 6, 41-42; R-App. 108, 143-44).

- Upon arrival to the residence, the officers in both cases heard concerning noises—"some female screams as if somebody had been in trouble" in Maddix and "two loud bangs" like "things being shuffled around" in Matalonis's case. 2013 WI App. 64 at ¶¶ 2-3; (R. 34: 8, 25, 43, 50; R-App. 110, 127, 145, 152).

- Upon entry into the residence, the officers in both cases talked to the residence occupants, who provided explanations for the noises and the earlier domestic disturbance. Maddix, 2013 WI App. 64, at ¶¶ 5-6; (R. 34: 10, 19, 24-25, 44, 50, 52, 62-64; R-App. 112, 121, 126-27, 146, 152, 164-66).

[1] See State's Brief, at 21.

- Notwithstanding the occupants' explanations, the officers in both cases conducted a sweep of the residence—looking for either "another victim or aggressor." Maddix, 2013 WI App. 64 at ¶ 7; (R. 34: 11; R-App. 113).

- Ultimately, the officers located illegal drugs in a room within the residence—a closet with lights on within an otherwise unlit room in Maddix and a locked upstairs room in Matalonis's case. 2013 WI App 64 at ¶ 8; (R. 34: 16-17, 27; A-App. 118-19, 129).

Applying Maddix and Ultsch, the court of appeals focused upon what the officers were aware of after they entered Matalonis's residence and spoke with him about Antony's injuries:

- Matalonis' brother Antony had been injured and was receiving treatment. (R. 34: 6, 41; R-App 108, 143);

- Antony told the officers that four people beat him up outside a bar. (R. 34: 7; R-App 109);

- A blood trail went from Matalonis' residence to the other residence where the officers first responded and made contact with Antony. (R. 34: 7-8, 42; R-App 109-10, 144)

- Two loud bangs coming from inside the residence. (R. 34: 8, 25, 43; R-App. 110, 127, 145);

- Blood was on the side outside door of Matalonis' residence. (R. 34: 8, 25, 43; R-App 110, 127, 145);

- Blood was visible in the foyer and inside the residence. (R. 34: 44; R-App. 146);

- Matalonis admitted to fighting only his brother Antony at the residence. (R. 34: 19, 44, 50, 62; R-App. 121, 146, 152, 164);

- Matalonis was cleaning up after the fight, and he had a bucket and mop out. (R. 34: 25, 52, 62, 64; R-App. 127, 154, 164, 166);

- No information or evidence existed that a third individual besides Matalonis or Antony was injured or a threat inside the home. (R. 34: 12, 23, 37, 50; R-App. 114, 125, 139, 152);

- The officers never inquired whether others were present in the residence. (R. 34: 23, 37, 50; R-App. 125, 139, 152).

Matalonis, slip op, ¶¶ 22-25.

As in Maddix, the court of appeals correctly recognized that no evidence corroborated the officers' belief that (a) another person was present in Matalonis's residence, but (b) someone was in need of assistance. Matalonis, slip op. ¶¶ 22-25; R-App. 202-04 Matalonis' brother no longer needed assistance after the officers made contact with him at 510 45th Street and arranged for a rescue squad to take him to the hospital. (R. 34: 7; R-App. 109). Similarly, Matalonis himself was unjured and did not require medical assistance. (R. 34: 44; R-App. 146). Although Antony claimed that he fought with four persons at a bar, he did not state that any of those hypothetical persons sustained injuries or returned to Matalonis's residence. (R. 34:6-7; R-App. 108-09); Matalonis, slip op. ¶ 25. The officers only located one blood trail that led to Matalonis's residence, and they previously located the source of this blood trail—Antony. Matalonis, slip op. ¶ 25; (R. 34: 23, 49-51; R-App. 125, 151-53). Finally, Matalonis confirmed that he had *only* fought with Antony, but he had left. (R. 34: 19, 44, 50, 62; R-App. 121, 146, 152, 164).

Even after the officers started the search,[2] they did not locate additional evidence inconsistent with what Matalonis told them: he fought only his brother Antony inside his residence.

The court of appeals properly rejected the State's position that "the officers 'were [] not required to conclude that only [Matalonis's brother] had been injured.'" Matalonis, slip op. ¶ 25; R-App. 204. In both its appellate briefs and brief in chief before this Court, the State wrongly focused on what the officers "did not know":

- "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 court of appeals brief, pages 5-6; State's brief in chief, pages 28, 30.

- "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 court of appeals brief, page 6; State's brief in chief, page 17.

- "[T]he officers *did not know* if other persons, who were the aggressors, were present in the home." State's court of appeals brief, page 14; State's brief in chief, page 31.

- "He [Officer Ruha] *did not know* if an aggressor was still inside." State's court of appeals brief, page 14.

- "Officer Ruha candidly acknowledged that he had *no way of knowing* whether anyone was behind the locked door." State's brief in chief, page 18.

[2] Again, for the reasons stated earlier, the Court should determine whether the officers had an objectively reasonable basis to search Matalonis's house from the moment they entered and spoke with him about Antony's injuries.

Focusing on what the officers "did not know" inverts the community caretaker doctrine to relieve the State of proving that the officers had an objectively reasonable basis (actual facts) supporting a belief that a person exists who needs assistance. As the court of appeals correctly responded:

> [T]he absence of contrary evidence alone does not provide an objectively reasonable basis. … A mere possibility that another person may be injured without any other evidence that concretely points to the possibility that a member of the public required assistance does not meet the more demanding objective reasonable basis standard.

Matalonis, slip op. ¶ 25 (R-App. 204) (citing Ultsch, 2011 WI app. 17, ¶ 15). The Maddix court rejected a search based on what the officers "did not know," saying "To conclude otherwise, in our view, could allow this exception to justify virtually any residential 'sweep' as part of a police response to an alleged domestic disturbance." 2013WI App. 64, at ¶ 37.

Both the State and the Dissent fall short attempting to distinguish Matalonis' case from Maddix or Ultsch. State's brief, pages 21-24; Matalonis, slip op., ¶¶ 39-40 (R-App. 209-15). They first the lack of "evidence of physical violence" in Maddix but present in Matalonis' case. See State's brief, page 22; Matalonis, slip op., ¶ 39 (R-App. 209-10). Both the State and the Dissent fail to explain how any of the "evidence of physical violence" concretely points to someone sustaining injuries besides Antony. Further, this distinction fails to acknowledge the lack of evidence of another person existing in both Maddix's and Matalonis's residences. 2013 WI App. 64, at ¶ 27.

Second, the Dissent and State note a lack of inconsistent statements in Maddix whereas in Matalonis' case he and his brother gave inconsistent statements regarding who was involved in the fight and where it

occurred. State's brief, page 22; Matalonis, slip op., ¶ 39; (R-App. 210). Yet in Maddix, the officers confronted a similar situation where the woman "failed to explain why she was afraid," which raised their suspicion that someone else was inside the residence. 2013 WI App 64 at ¶29. The Maddix court responded that "police subjective intend does not alone dictate the result," particularly where an objectively reasonable basis" does not exist. Id. at ¶ 30. Here too, Matalonis's and Antony's inconsistent statements are consistent on the important two points: (1) nobody else sustained injuries, and (2) nobody else was located at Matalonis's residence. (R. 34: 19, 44, 50, 62; R-App. 121, 146, 152, 164). The officers' subjective doubts about Matalonis's statements does not make up for the absence of actual evidence that someone *else* was inside Matalonis's house.

Third, the Dissent points to the fact that the officers in Maddix did not receive permission to enter the residence whereas the officer's in Matalonis' case obtained consent to enter into the foyer to meet with Matalonis. 2013 WI App 64 at ¶ 4; See State's brief, page 22; Matalonis, slip op., ¶ 39 (R-App. 210). In drawing this distinction, they ignores the fact that the officers ordered Matalonis to remain on his couch and searched his residence, specifically the upstairs locked room, without his consent. (R. 34: 11, 44, 63-64, 68; R-App. 113, 146, 165-66, 170).

Fourth and similarly, the Dissent points out the "timing" differences between Maddix and Matalonis' case. 2013 WI App. 64 at ¶¶ 28-33; See State's brief, page 22; Matalonis, slip op., ¶ 39 (R-App. 210). Specifically, they claimed that "Matalonis does not challenge the circuit court finding that one of the officers conducted an immediate, brief search of the rooms of the house . . . ." Id. This point ignores testimony that the sweep took Officer Ruha about 20 minutes, including the time to locate the key to the locked upstairs room. (R. 34: 59, 65, 69; R-App. 161, 167, 171). Regardless, timing primarily plays into the third prong of the community caretaker analysis: "whether the

public interest outweighs the intrusion upon the privacy of the individual." Maddix, 2013 WI App 64 at ¶16.

Lastly, the Dissent argues that evidence of an "unknown, potentially injured person" exists in Matalonis' case but not in Maddix. See State's brief, page 23; Matalonis, slip op. ¶¶ 39-40; (R-App. 210-11). The Dissent ironically titles this distinction "***unknown, potentially injured person***" in its opinion, as the officers in Matalonis's case had no knowledge of any person much less that this person had been injured at all. The Dissent further reasons, "If the facts in Maddix were changed, so that the 911 caller had told the police that the caller had heard the voices of three different people arguing in the apartment, the scenario would be more similar to the facts here [in Matalonis's case]." Matalonis, slip op. ¶ 40; (R-App. 211).

This statement shows that the Dissent and State misunderstood the facts in Matalonis' case. First, Antony (comparable to the 911 caller in Maddix) never stated that the fight occurred *at* Matalonis' home. (R. 34: 7; R-App. 109). Second, Antony never stated that *anyone else* sustained injuries or needed assistance, whether at a bar or anywhere. (R. 34: 23, 37, 50; R-App. 152). Perhaps the Dissent's modified facts for Maddix would have altered the court of appeals' holding in that case, but those modified facts are *not* present here in Matalonis' case.

Ultimately, Matalonis believes the following hypothetical scenarios would provide an objectively reasonable basis that someone existed in Matalonis's house needing assistance: (a) if they had not already located Antony all bloodied, (b) if the blood or evidence allowed them to conclude[3] that a third person was injured and had been inside Matalonis' house, or (c) if Antony had stated

[3] E.g. if the amount of blood, based upon their training an experience, could not have reasonably come from a single person.

that the fight had occurred at Matalonis' residence and involved multiple individuals. Without evidence placing *another* person besides Matalonis or Antony at the residence, the officers could only speculate that someone else was there and needed assistance. As both the court of appeals in Matalonis's case and the Maddix court recognized, physical possibility is not the same as objectively reasonable fact. Matalonis, slip op., ¶ 25; (R-App. 2014) (citing Maddix, 2013 WI App. 64 at ¶ 27).

5. The court of appeals correctly determined that the public interest did not outweigh the intrusion on Matalonis's privacy.

The court of appeals correctly held that the public interest in checking for possible victims or aggressors inside Matalonis's residence did not outweigh the intrusion upon his privacy such that the officers reasonably exercised their search. Matalonis, slip op. ¶¶ 31-35 (R-App. 205-08). The court of appeals considered the following factors to assess the reasonableness and balance between public interest and privacy:

> (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. at ¶ 31 (R-App. 205-06) (citing Pinkard, 2010 WI 81, at ¶ 42.

The public interest and exigency was non-existent here because the officers had already located the injured person, Antony, and then made contact with Matalonis, who was cleaning up his house after the fight. Id. at ¶¶ 32-

33; (R-App. 206-07). As the court of appeals noted, "Here however, as in Maddix and Ultsch, nobody expressed concern for the welfare of another individual." Id. at ¶ 32; (R-App. 206-07). The court of appeals reasoned further that "the exigent nature of the situation diminished significantly once the officers were informed by Matalonis that he had been involved in a fight with his brother and that his brother had left." Id. Later, the officers' delayed actions moving past the locked door to search other upstairs room and by later seeking a key from Matalonis rather than kicking down the locked door, undercuts the officers' so-claimed heightened public interest to check if someone was behind the door "bleeding out" or in need of medical attention. (R. 34: 12, 14, 54, 65; R-App. 114, 116, 156, 167).

In its brief in chief, the State argues that evidence that "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." State's brief, page 25. As the court of appeals noted, however, the situation became less dynamic and clearer after the officers arrived at Matalonis's house and talked to him. Matalonis, slip. Op, ¶ 32; (R-App. 206-07). Matalonis provided answers consistent with all the physical evidence: where the fight occurred, with whom the fight occurred, when the fight had occurred and whether anyone else was involved in the fight. Id. While not requiring officers to "choose between conflicting versions," the officers here had no reason to believe someone else existed inside Matalonis's residence needing assistance based upon either Matalonis's or Antony's statements.

The second factor, the attendant circumstances surrounding the search, supports Matalonis' privacy interest. The court of appeals correctly described the officers search of Matalonis' home as "more suspect" than other warrantless entries. Matalonis, slip op. ¶ 33 (citing Pinkard, 327 Wis. 2d 346 at ¶ 20) (R-App. 207). The court of appeals previously acknowledged the "heightened

privacy interest in preventing intrusions into one's home." Maddix, 2013 WI App 64, at ¶ 35; see also Ultsch, 2011 WI App 17 at ¶ 26. Even the dissenting opinion here acknowledges that "[a] warrantless, unconsented search of a residence has great constitutional significance." Matalonis, slip op. ¶ 45 (citing Payton v. New York, 445 U.S. 573, 589-90 (1980)) (R-App. 213). The officers displayed overt force and authority by restraining Matalonis's movement during the search as well as threatening to kick down the upstairs locked door if he did not offer up the key. (R. 34: 11, 15, 44, 63-65; R-App. 113, 117, 146, 165-67). Finally, Matalonis did not consent to the search of his home, including the upstairs locked room. (R. 34: 15, 55-57, 65-68; R-App. 117, 157-59, 167-70). The Dissent recognized the "attendance circumstances" here: "The intrusions were significant, in that they involved searches of different rooms of his residence while the officers required Matalonis to sit in the living room, including entering a locked room without consent." Matalonis, slip op. ¶ 45 (R-App. 213).

Despite this concession, both the dissent and the State attempted to minimize the "attendant circumstances surrounding the search." State's brief at 26; Matalonis, slip op., ¶ 46 (R-App. 213-14). While the dissent claims that the intrusions were "limited in time," this contrasts with testimony at the hearing that the search took almost 20 minutes, including searching the locked room. (R. 34: 59, 65, 69; R-App. 161, 167, 171). Similarly, the dissent claims that the intrusion "did not involve threats," yet the officers clearly threatened to kick down Matalonis door. (R. 34: 15, 65; R-App. 117, 167). Finally, the State argues in its brief in chief that the lack of weapons or handcuffs, coupled with searching only in places with blood where persons could be located minimized the attenuating circumstances. State's brief, page 26. Maddix properly responded to similar arguments from the State, recognizing that conducting a "continuing search of the entire apartment without requesting consent to do so (until the final search of the

closet), [is] an act displaying overt authority over the occupants." 2013 WI App 64, at ¶ 34. Taken together, the attenuating circumstances here no more favor the State than they did in Maddix.

The final factor[4], whether the officers had any alternatives available before searching the residence, does not overcome the significant intrusion upon Matalonis' privacy rights. The court of appeals correctly noted, "The primary alternative available to the officers in this case was to ask Matalonis whether there was anyone injured (or uninjured) in his home." Matalonis, slip op. ¶ 35; (R-App. 207-08). Moreover, the officers only attempted to obtain a search warrant after entering into the upstairs locked room. (R. 34: 34; R-App. 136). The court of appeals echoed Maddix that "It is relevant to the overall question of reasonableness that the officers looked for people … without consent, apparently without first asking … whether anyone else might be there." Matalonis, slip op. ¶ 35 (quoting Maddix, 2013 WI App 64, ¶ 36) (alterations supplied) (R-App. 207-08).

The Dissent and the State discount the alternative of questioning Matalonis about whether anyone else was inside his residence. State's brief, at 26-27; Matalonis, slip op. ¶ 46; (R-App. 213-14). The State laments that questioning Matalonis could be ineffective if he was untruthful to the officers. State's brief at 26. In Maddix, the court of appeals suggested that the officers need not accept statements at face value, but they could have probed them about the screams. 2013 WI App 64, at ¶ 36. The Dissent argued that no alternative existed where it was "given that someone might have been significantly injured." Matalonis, slip op. ¶ 46; (R-App. 213-14). In Ultsch, the court of appeals provided a perfect response to the Dissent: "The

[4] As the court of appeals noted, the third factor, "whether the search took place in an automobile," does not apply here. Matalonis, slip op. ¶ 34 (R-App. 207).

primary alternative available to the officers in this case was to rely on the representations of [Matalonis] . . . and do nothing." 2011 WI App 17, at ¶ 28. Here, the officers had no reason to do anything else, short of further question Matalonis or obtain a search warrant, after they observed nothing to dispute his statements that he fought Antony who left the residence.

### B. The officers' search was not justified under either the protective sweep or hot pursuit doctrines.

#### 1. Protective sweep doctrine in Wisconsin.

The "protective sweep doctrine" originated in Maryland v. Buie, 494 U.S. 325 (1990). Buie defined "protective sweep" as "a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others." Id. at 327. The Buie Court made clear that the "protective sweep" occurred within the context of an arrest (or execution of an arrest warrant). Id. at 333-34. Beyond looking in "spaces immediately adjoining the place of arrest from which an attack could be immediately launched," Buie required "articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene." Id. at 334. Buie made clear that the "protective sweep" authorizes a limited search. The sweep "may extend only to a cursory inspection of those spaces where a person maybe be found" and "lasts no longer than is necessary to dispel the reasonable suspicion of danger" or "no longer than it takes to complete the arrest and depart the premises." Id. at 335-36. Wisconsin courts have allowed a protective sweep in conjunction with a search justified by a bona fide community caretaker function. Maddix, 2013 WI App 64 at ¶ 15 (citing State v. Horngren, 2000 WI App 117, ¶¶19-21, 238 Wis. 2d 347, 617 N.W.2d 508).

2. The court of appeals correctly held that the protective sweep doctrine did not justify the officers' search of Matalonis's residence.

Here, the court of appeals correctly rejected the protective sweep doctrine as an alternative basis for the officers' search of Matalonis residence, particularly the upstairs locked room. Matalonis, slip op., ¶ 26 (R-App. 204). The State[5] pointed to Antony's injuries as well as Antony's statements about fighting four other persons to provide the basis for a protective sweep. State's brief, page 31. The court of appeals rejected the State's argument for two reasons.

On one hand, the officers could not reasonably base their protective sweep upon Antony's statements. Matalonis, slip op., ¶ 29; (R-App. 205). By the time the officers began the so-called "protective sweep," the blood trail and Matalonis' statements had countered everything Antony said beyond being in a fight in the first place. By contrast, even if the officers' believed Antony's statements about fighting four guys or groups of guys at a bar, this statement does not support an objectively reasonable belief that any of these guys also went to Matalonis's house.

On the other hand, the officers could not point to any information to reasonably conclude that additional persons existed, injured or otherwise, much less that they were inside Matalonis' residence. (R. 34: 23, 37, 50; R-App. 125, 139, 152). Again, neither officer testified that the blood they observed was from someone besides Antony or that they located a separate blood trail leading into Matalonis's residence. (R. 34; R-App. 103-92). Unsurprisingly, Officer Yandel admitted he had "no knowledge of anyone else

[5] The Dissent did not address the protective sweep doctrine as an alternative basis justifying the officers' search of Matalonis's residence. Matalonis, slip op. ¶ 38 n. 1; (R-App. 209).

being involved in this fight or injured . . . ." (R. 34:50; R-App. 152).

By contrast, the State, often quoting the trial court's oral decision, harkens back to the "what the officers didn't know" to justify the protective sweep. For example, the trial court stated, "[T]hey don't know if they're going to find four guys home from the bar that are there." See State's brief, at 30; (R. 34:85; R-App. 187). Similarly, the State argues, "He [Officer Ruha] did not know if an aggressor was still inside." Id. at 31; (R. 34:37; R-App. 139). Again, as the court of appeals stated in an unpublished opinion "The absence of contrary evidence alone, however, does not provide an 'objective reasonable basis' nor is it a 'specific and articulable' fact warranting police to believe such a person is present on the scene—let alone that such a person is dangerous or in danger." State v. Schwartz, 855 N.W.2d 492, Appeal No. 13 AP 1868-CR, (Wis. Ct. App. July 30, 2014) (unpublished decision); (R-App. 216-21).

Beyond lacking an objective, reasonable basis to believe "the area to be swept harbors an individual posing a danger to those on the arrest scene," the search of the upstairs, locked bedroom is far from the limited search first authorized in Buie. 494 U.S. at 334. Matalonis testified that the total sweep of his house, including the upstairs locked room, lasted nearly 15-20 minutes. (R. 34: 59, 65, 69; R-App. 161, 167, 171). To complete the sweep, the officers took an additional 5 minutes searching for the key to the upstairs room, including time negotiating with Matalonis and threatening to kick down his door. Id. This sweep hardly seems akin to the "cursory inspection" of those spaces where a person maybe be found" which "lasts no longer than is necessary to dispel the reasonable suspicion of danger" or "no longer than it takes to complete the arrest and depart the premises." Buie. 494 U.S. at 335-36.

### C. The "hot pursuit doctrine" did not justify the officers' search of Matalonis's residence.

Likewise, the trial court erroneously applied the "hot pursuit doctrine" to uphold the officers' search of Matalonis' residence. Specifically, the trial court cited Bringham City, Utah v. Stuart, 547 U.S. 398 (2006); Warden v. Hayden, 387 U.S. 294 (1967) and State v. Larsen, 2007 WI App 147, 302 Wis.2d 718, 736 N.W.2d 211 to justify the initial entry and subsequent search of Matalonis' residence. (R. 34:83; R-App. 185). The court specified that "if there's an objective, reasonable basis for belief by law enforcement that an occupant of the home is seriously injured or imminently threatened with injury, no warrant is required." Id. The court noted that the hot or fresh pursuit analysis was not the "community caretaker exception," but the court did clarify that the latter was equally applicable. (R. 34:84; R-App. 186). The State, while discussing the "blurred lines" between warrant exception doctrines, does not specifically argue that "hot pursuit," or the "emergency doctrine," justified the officers' search. State's brief, page 15, note 2.

The case law applied by the trial court is not only inapposite to this case but also confirms that, even under a "hot pursuit" doctrine, the officers' search of Matalonis' residence was a violation of his constitutional rights. First, Brigham City, Utah v. Stuart, 547 U.S. 398 (2006) decided that police may enter a home without a warrant when they have an *objectively reasonable basis* to believe that an occupant is seriously injured or imminently threatened with such injury. Here, Matalonis does not contest the officers' initial entry into his residence. At the point where the officers entered the residence, they had followed a trail of blood from where they located Antony, heard two loud bangs, and had not yet spoken to Matalonis. Once they entered the residence, however, the learned (1) Matalonis was the only other person in the fight, (2) the altercation was over and done with, and (3) no evidence existed that a third-person, victim or threat, existed. (R. 34: 19, 25, 44,

50, 52, 62, 64; R-App. 121, 127, 146, 152, 154, 164, 166). Accordingly, even if Brigham City and its "Emergency aid doctrine" applied in Matalonis' case, the officers' lacked an objectively reasonable basis to believe other persons were in the residence and in need of emergency aid.

Similarly, State v. Larsen should not apply here, where it upheld the emergency aid doctrine in a case where officers entered a residence looking for evidence leading to the victim's location. 2007 WI App 147, 302 Wis. 2d 718, 736 N.W.2d 211. The distinction between Larsen and Matalonis's case is that the officers did not have an objectively reasonable basis to conclude that they were still searching for someone, victim or threat. Matalonis' case would cut differently if the officers' had followed a blood trail *prior to* locating the source of the blood. Once Matalonis explained that his brother Antony and he had fought, no other evidence existed to reasonably believe *another* person was in the residence, regardless of blood inside the residence.

Finally, Warden v. Hayden, 387 U.S. 294, 298 (1967) should not apply because it stands for the proposition that officers may enter a residence when in "hot pursuit" of a suspect of a crime who entered the same within five minutes. Here, the officers located both known persons involved in the physical altercation—Antony and Matalonis. Rather than enter the side entrance, where the blood trail ended at Matalonis's residence, they proceeded to the front door and knocked—this shows that the search was far from "hot pursuit" and more an investigation. (R. 34; 9, 43; R-App. 111, 145). Matalonis explained to the officers that his brother and he fought at the residence. (R. 34: 19, 44, 50, 62; R-App. 121, 146, 152, 164). The officers had no information that another person existed that they were then looking for. Consequently, the "hot pursuit doctrine" established by Hayden would not apply to allow the officers to continuing searching or sweeping Matalonis's residence.

## CONCLUSION

For the reasons stated above, this Court should affirm the court of appeals decision reversing and remanding with directions to suppress evidence resulting from the warrantless search.

Dated this 18th day of June, 2015.

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 7,829 words.

## 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 18th day of June, 2015

Signed:

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**STATE OF WISCONSIN**

**IN SUPREME COURT**

Case No. 2014AP000108 - CR

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STATE OF WISCONSIN,

Plaintiff-Respondent-Petitioner,

v.

CHARLES V. MATALONIS,

Defendant-Appellant.

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# APPENDIX OF DEFENDANT-APPELLANT

# I N D E X
# T O
# A P P E N D I X

# CERTIFICATION AS TO APPENDIX

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 § 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.

Dated this 18th day of June, 2015

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