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

REPLY BRIEF OF PLAINTIFF-RESPONDENT-PETITIONER

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ARGUMENT

I. An officer may have an objectively reasonable basis to conduct a community caretaker search even if the evidence does not concretely point to someone sustaining injuries.

Citing the Court of Appeals' decision, Matalonis argues that the State and the Dissent failed to explain how "'evidence of physical violence' concretely points to someone sustaining injuries besides Antony." Matalonis's brief at 16. Relying on *State v. Ultsch*, 2011 WI App 17, 331 Wis. 2d 242, 793 N.W.2d 505, the *Matalonis* majority stated that the "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." *State v. Charles V. Matalonis*, No. 2014AP108-CR, slip op. ¶ 25 (Wis. Ct. App. Dec. 23, 2014) (Pet-Ap. 112).

In *Ultsch*, the court of appeals never used the word "concretely." Instead, it focused on whether the officers had an objectively reasonable basis to believe that someone needed assistance. 331 Wis. 2d 242, ¶ 15.

The community caretaker doctrine does not require officers to possess actual knowledge that someone inside a residence is injured or needs help. For example, in *State v. Pinkard*, 2010 WI 81, 327 Wis. 2d 346, 785 N.W.2d 592, the evidence did not "concretely point" to the possibility that Pinkard or his girlfriend were actually hurt and needed assistance. Yet based on the circumstances, this Court concluded that the officers could reasonably infer that the occupants were crime victims or had suffered from a drug overdose. *Id.* ¶ 58. The question here is whether the

information available to the officers provided them with an objectively reasonable basis to believe that someone inside was hurt and needed assistance. *State v. Gracia*, 2013 WI 15, ¶¶ 17, 40, 345 Wis. 2d 488, 826 N.W.2d 87.

The information that officers relied upon when they decided to check Matalonis's home for other injured persons is at least as compelling as the evidence in *Pinkard*. Unlike *Pinkard*, the officers knew that Antony had been involved in a serious physical fight. Based upon the blood trail leading inside Matalonis's foyer and up his stairs (34:7-8, 44; Pet-Ap. 132-33, 169), the officers could reasonably conclude that a serious fight had occurred, at least in part, at Matalonis's home. Because Antony sustained injuries and Matalonis did not, the officers could have reasonably believed that the incident may not have been limited to violence between the brothers, and may have involved others. *Matalonis*, slip op. ¶ 42 (Pet-Ap. 120).

Matalonis suggests that the officers could not form an objectively reasonable basis to believe anyone inside needed assistance because Antony never stated that (a) the fight occurred inside Matalonis's home, and (b) Antony never indicated that anyone else needed assistance. Matalonis's brief at 18. The fact that the blood trail led to Matalonis's residence did not preclude the possibility that the fight may have actually started elsewhere rather than at Matalonis's

residence. In fact, Matalonis's statement to Officer Yandel suggests that the conduct that precipitated the fight began at a bar and may have involved other individuals.[1]

Likewise, the fact that Antony did not report that anyone else had been injured does not mean that the officers lacked an objectively reasonable basis for concluding that someone else had been injured in the fight. It would not be at all unreasonable for officers investigating a fight to reasonably conclude that multiple participants had sustained injuries or that the injured person the officers first encountered was the primary aggressor.

Matalonis also suggests that the officers lacked an objectively reasonable belief that someone was injured behind the locked door because the officers only observed two drops of blood on it. Matalonis's brief at 4, 8. Officer Ruha never testified that the door only had two drops of blood on it. On cross-examination, defense counsel showed Ruha Exhibit 8, a photograph of the locked door (34:33; 37:Ex. 8; Pet-Ap. 158). Referring to this exhibit, defense counsel then asked: "And the blood you're speaking about are these two little drops right here?" Ruha replied, "[d]rops here, drops all the way down here" (34:33-34; Pet-Ap. 158-59). On direct examination, the prosecutor had shown Ruha photographs of the dead bolted door, including Exhibits S-1 and S-2 (34:13; 37:Ex. S-1, S-2; Pet-Ap. 138). Ruha described the door as having "blood splatters" without reference to the number (34:12-13; Pet-Ap. 137-38). Exhibits S-1 and S-2 show a

[1] In his report, Officer Yandel described his conversation with Matalonis while Officer Ruha conducted the community caretaking and protective sweep. Matalonis told Officer Yandel that he and Antony had been drinking at a bar. Antony was highly intoxicated. Employees asked Antony to leave because he was attempting to cause problems with people. Antony "continued trying to fight and would not calm down" when they got to Matalonis's house (37:Ex. S-5 at 3). The circuit court received Officer Yandel's report into evidence (34:2, 40; Pet-Ap. 127, 165).

number of spatter marks running across the bottom of the door and on the adjacent wall (37:Ex. S-1, S-2). Exhibit 9 is a photograph of a portion of the door. It reveals three red drops forming a triangle between the lock and door handle as well as additional red marks on the adjacent door jamb (37:Ex. D-9; 37:Ex. S-3). Based on the blood on the handrail leading up the stairway, glass shards on the floor, and blood splatter on the locked door (34:12; Pet-Ap. 137), the officers had an objectively reasonable basis to believe that an injured individual may be inside the locked room.

Matalonis asserts that once he told the officers that only he and Antony fought at the house, the officers lacked an objectively reasonable basis to believe that anyone else participated in the fight or was hurt. Matalonis's brief at 14-15. The State disagrees. The officers lacked any meaningful way to assess Matalonis's truthfulness as they stood in his doorway. Did Matalonis really live alone as he claimed?[2] Was the fight strictly between Matalonis and Antony or were others involved, either as aggressors or victims? Based upon the seriousness of Antony's injuries, officers could not simply ignore what would be an objectively reasonable belief that someone else may have been injured and needed assistance.

Matalonis suggests that had the officers determined the blood they observed belonged to a third person, they would have had reason to believe other persons were present inside the residence. Matalonis's brief at 18, 24. While DNA technology has made remarkable advances, officers responding to a place of carnage lack any meaningful way to readily identify whether blood belongs to more than one person. As the Dissent noted, for community caretaking

[2] Matalonis represented that he lived alone to the officers (34:10; Pet-Ap. 135), but a citizen had previously informed the officers that Antony lived with Matalonis (34:7; Pet-Ap. 132). During the search, Officer Ruha discovered that another person, M.B., lived in the basement (34:21; Pet-Ap. 146).

purposes, blood testing was not a feasible alternative. *Matalonis,* slip op. ¶ 47 (Pet-Ap. 122). The only feasible alternative available to the officers was to search Matalonis's home, including the locked room, for injured people.

As with any warrantless search, the fundamental question is whether Officers Ruha and Yandel acted reasonably. State's brief-in-chief at 10-11. In assessing reasonableness, this Court has previously cautioned against "taking a too-narrow view" in determining whether the community caretaker function is present.

> "An officer less willing to discharge community caretaking functions implicates seriously undesirable consequences for society at large: In that event, we might reasonably anticipate the assistance role of law enforcement . . . in this society will go downhill. . . . The police cannot obtain a warrant for . . . entry. [W]ithout a warrant, the police are powerless. In the future police will tell such concerned citizens, 'Sorry. We can't help you. We need a warrant and can't get one.'"

Pinkard, 327 Wis. 2d 346, ¶ 33 (quoting *People v. Ray*, 981 P.2d 928, 939 (Cal. 1999) (further internal quotations omitted)).

This Court should decline Matalonis's invitation to "take a too-narrow view" of the community caretaking function. That the officers did not know if anyone was injured inside Matalonis's home does not mean that they lacked an objectively reasonable basis to conclude that an injured person inside Matalonis's home may have needed assistance. Based upon the incomplete and inconsistent information available to the officers about a potentially violent crime, the officers had an objectively reasonable basis to check Matalonis's home for other persons who may have been injured in a fight that resulted in substantial injuries to Antony.

Officers Ruha and Yandel acted with a bona fide community caretaker purpose when they searched Matalonis's

home. The public interest in their search outweighed any intrusion into Matalonis's privacy interests. Based on this record, the State respectfully requests that this Court hold that the officers acted reasonably when they searched Matalonis's home.

II. The officers relied upon specific, articulable facts when they conducted a protective sweep of Matalonis's home for people.

Based on the information that Matalonis provided to the officers, Matalonis argues that Antony's statements did not provide the officers with reasonable suspicion necessary to support a protective sweep of his home. Matalonis's brief at 24. The State disagrees.

An officer's authority to conduct a protective sweep is based upon *Terry's*[3] reasonable suspicion rather than a higher probable cause standard. *Maryland v. Buie*, 494 U.S. 325, 327-28 (1990). "The information necessary to establish reasonable suspicion can be less in both content and reliability than the information needed to establish probable cause. . . . [T]he required showing of reasonable suspicion is low." *State v. Eason,* 2001 WI 98, ¶ 19, 245 Wis. 2d 206, 629 N.W.2d 625. Even when officers lack "concrete information" that tends to show other persons are present, the seriousness of the criminal conduct is the "dominant consideration" in determining whether the protective sweep is justified. 3 WAYNE R. LAFAVE, SEARCH AND SEIZURE, § 6.4(c) (5th ed. 2012).

A severely beaten and highly intoxicated Antony told the officers that several individuals had assaulted him outside a bar (34:6-7; Pet-Ap. 131-32). A blood trail led the officers to Matalonis's home (34:7-8; Pet-Ap. 132-33).

[3] *Terry v. Ohio*, 392 U.S. 1, 22 (1968).

Matalonis told the officers that only he and Antony fought (34:19; Pet-Ap. 144). While Matalonis's version of events may have raised questions about Antony's statements, Matalonis's statements confirmed that Antony had been beaten and injured. The officers simply could not foreclose the possibility that the fight may have begun at the bar and continued to the house or that other individuals may have participated in Antony's beating. These conclusions would certainly be reasonable as the officers assessed whether other individuals may have been present in Matalonis's home who posed a danger to the officers as they investigated the battery to Antony.

That the officers did not know whether other individuals were actually inside Matalonis's home did not render their suspicions unreasonable. Antony told the officers that other individuals were involved and the officers could certainly consider that information when they assessed whether it was necessary to conduct a protective sweep. The officers' reliance on Antony's representations when coupled with his serious injuries was reasonable because reasonable suspicion does not require the level of certainty necessary for an arrest, much less a conviction. By its very nature, reasonable suspicion recognizes that the information upon which the officers act may often be incomplete, ambiguous, or conflicting. That the officers may have relied upon information later determined to be incorrect does not render their decision to conduct a protective sweep unreasonable. State's brief-in-chief at 10-11.

Matalonis also challenges the scope of the protective sweep, suggesting that it took longer than necessary to dispel the officers' suspicion that other individuals may have been present. Matalonis's brief at 25. Matalonis initially stated that Officer Ruha was only gone for ten-to-fifteen minutes and later testified that it took twenty minutes (34:65, 69; Pet-Ap. 190, 194). During this time, Ruha

encountered M.B. in the basement. Ruha waited for M.B. to exit his room before he spoke to M.B., and then continued his sweep upstairs (34:21; Pet-Ap. 146). Matalonis then described the interaction related to locating the key to the locked door as taking five minutes, while Ruha stated it took seconds (34:31, 69; Pet-Ap. 156, 194). In light of Ruha's interaction with M.B. and Ruha's effort to locate a key to open the door, the sweep's duration was reasonable.

III. The hot pursuit doctrine does not apply to Matalonis's case.

Matalonis notes that the circuit court relied upon the hot pursuit doctrine when it denied his motion to suppress. Matalonis' brief at 26 (34:83-84; Pet-Ap. 208-09). The exigent circumstance of "hot pursuit" applies "where there is an immediate or continuous pursuit of [a suspect] from the scene of a crime." *State v. Richter*, 2000 WI 58, ¶ 32, 235 Wis. 2d 524, 612 N.W.2d 29 (alteration in original) (citations omitted) (internal quotation marks omitted). Here, the officers were not pursuing a suspect when they traced the blood trail to Matalonis's home. Instead, they followed the blood trail to determine where Antony came from and whether other individuals were involved (34:7; Pet-Ap. 132). The hot pursuit doctrine simply does not apply to Matalonis's case.

IV. The circuit court's consideration of the emergency doctrine was not necessarily misplaced.

Matalonis also asserts that the circuit court erred when it relied in part upon two emergency doctrine cases, *Brigham City, Utah v. Stuart,* 547 U.S. 398 (2006), and *State v. Larsen*, 2007 WI App 147, 302 Wis. 2d 718, 736 N.W.2d 211, to deny his motion to suppress. Matalonis's brief at 26-

27.[4] Under the emergency doctrine, officers may conduct a warrantless search of a home only if the officers have an objectively reasonable belief that a warrantless entry is necessary to provide immediate aid or assistance to a person in danger inside the home. *Larsen*, 302 Wis. 2d 718, ¶¶ 15, 18-19.[5]

Matalonis contends that the officers lacked an objectively reasonable basis to search his home under the emergency doctrine. Matalonis believes that once the officers spoke to him, the officers should have known that Matalonis was the only other person involved in the fight, that the altercation was over, and that a "third person, victim or threat," did not exist. Matalonis's brief at 26. Although Matalonis and Antony provided conflicting information concerning the circumstances of Antony's beating, Matalonis's argument would require the officers to accept his statements at face value and completely disregard Antony's claim that several individuals had assaulted him.

Matalonis's approach would require officers to rapidly and correctly assess the truthfulness of various persons based on their statements, even when their statements conflict with one another. Courts have never required officers to make these choices when someone's welfare may

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[4] The State did not argue for application of the emergency doctrine in the Court of Appeals and the State's petition did not ask this Court to consider application of the emergency doctrine to this case. While it referenced the emergency doctrine in its brief-in-chief, the State did not argue it. State's brief-in-chief at 15 n.2. But because Matalonis discusses the emergency doctrine's inapplicability to his case, the State will address it.

[5] In its brief-in-chief, the State noted the practical difficulties courts have encountered deciding when the community caretaker doctrine and the emergency doctrine apply. State's brief-in-chief at 15 n.2. The challenge of differentiating between the two doctrines continues to vex appellate courts. *MacDonald v. Town of Eastham*, 745 F.3d 8, 13-14 (1st Cir. 2014).

be hanging in the balance. Under the objective standard, courts look "to the circumstances then confronting the officer, including his or her need for a prompt evaluation of possibly ambiguous information concerning potentially serious consequences." *State v. Rome*, 2000 WI App 243, ¶ 16, 239 Wis. 2d 491, 620 N.W.2d 225 (citation omitted).

Here, the officers knew that Antony had sustained significant injuries. Based on the blood trail, officers could reasonably conclude that Antony sustained those injuries inside Matalonis's home even though Antony claimed that multiple individuals inflicted the injuries on him at a bar. Matalonis stated that he and Antony fought and no one else was involved. As they stood at Matalonis's door, the officers simply had no reasonable way to determine who was being truthful. And they had no way to determine whether the blood they saw inside was only Antony's or may have also belonged to someone else who might need assistance. In light of the ambiguities that the officers faced, they acted reasonably when they checked the residence for others who may have been injured in the fight that resulted in Antony's hospitalization (34:7; Pet-Ap. 132).

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 6th day of July, 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 2,811 words.

Dated this 6th day of July, 2015.

_____
Donald V. Latorraca
Assistant Attorney General

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

I hereby certify that:

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

I further certify that:

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

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

Dated this 6th day of July, 2015.

_____
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