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STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT II

Case No. 2015AP1969-CR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

SANDRA D. NOREN,

Defendant-Appellant.

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On Notice of Appeal From the Judgment of Conviction  
Entered in the Walworth County Circuit Court,  
the Honorable David M. Reddy, Presiding

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BRIEF AND APPENDIX OF  
DEFENDANT-APPELLANT

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## **ISSUE PRESENTED**

When police officers respond to a medical emergency, and have been made aware of the likely cause of the person's condition, does a search of a closed wardrobe and purse contained therein exceed the scope of the emergency rule exception to the warrant requirement?

The circuit court answered no. It determined that a reasonable person under the circumstances would have thought that an emergency still existed and that "a reasonable person would search in an area that would provide them a better answer as to why the person is blue in the face". (23:43; App. 146).

## **STATEMENT ON ORAL ARGUMENT AND PUBLICATION**

This case requires the application of well-established legal and constitutional principles to the particular facts of the case. Neither oral argument nor publication is warranted.

## **STATEMENT OF THE CASE AND FACTS**

The state filed an information charging Ms. Noren with one count of possession of narcotic drugs, contrary to Wis. Stat. § 961.41(3g)(am), and one count of possession of drug paraphernalia, contrary to Wis. Stat. § 961.573(1). (4).

Ms. Noren filed a motion to suppress the evidence on the grounds the officer's search of a wardrobe in her bedroom and its contents exceeded the scope of what is permitted under the circumstances. (7:1-8). At the motion hearing,

Officers Spotz and Nettesheim testified for the state. (23:3-31; App. 107-134).

Officers responded to a residence in Lake Geneva after a possible drug overdose was reported. (23:4; App. 107). When Officer Spotz arrived, Officer Nettesheim and Sergeant Derrick were already on the scene attending to Ms. Noren, who was lying on her back in the kitchen. (23:4-5; App. 107-108). While the other officers attended to her, Officer Spotz spoke to Ms. Noren's nephew, Mr. Harris, who resided with her. (23:5; App. 108). Mr. Harris told the police that he had gone to bed around 10 p.m., but that he had woken up a couple of hours later. (23:5; App. 108). When he woke up, he saw Ms. Noren and she "appeared normal". (23:5; App. 108). About ten minutes later, Mr. Harris turned away from watching television and saw Ms. Noren lying on the kitchen floor. (23:5; App. 108). He told the police that her face was turning blue and that she was unresponsive, so he called 9-1-1. (23:5-6; App. 108-109).

Mr. Harris relayed to the police that he knew his aunt to be a heroin user, that he had, in the past, seen her use heroin, and that a few weeks earlier she had overdosed. (23:6; App. 109). Mr. Harris also told Officer Spotz that Ms. Noren was on medication for anxiety. (23:6; App. 109).

Officer Spotz testified that approximately ten to fifteen minutes after officers had arrived on scene, the emergency medical service unit (EMS) arrived and began attending to Ms. Noren. (23:7; App. 110). Officer Spotz testified that either he or one of the other officers notified the paramedics that Ms. Noren may have been suffering from a heroin overdose. (23:10; App. 113). Once EMS arrived, Officer Nettesheim began searching the apartment for contraband. (23:11; App. 114).

Officer Nettesheim testified that when he arrived Mr. Harris let him into the apartment and directed him to Ms. Noren. (23:14; App. 117). At that time he was made aware that she may have overdosed on heroin. (23:28; App. 131). Before EMS arrived, Officer Nettesheim applied oxygen and rolled Ms. Noren onto her side. (23:15; App. 118). In addition to Mr. Harris telling him that it was likely a heroin overdose, Officer Nettesheim had previously responded to an overdose involving Ms. Noren. (23:16; App. 119). In that incident, the pills that Ms. Noren had consumed were found next to her in plain view. (23:18; App. 121).

In this case, the officer did not observe anything on the kitchen floor in the area immediate to where Ms. Noren was lying. (23:18-19; App. 121-122). When EMS arrived, Officer Nettesheim “conducted a search to find out the reason for the possible overdose.” (23:15; App. 118). He went into Ms. Noren’s bedroom and first searched around her bed and inside her nightstand. (23:30; App. 133). When Officer Nettesheim did not find anything around the bed or in the nightstand he opened her wardrobe. (23:30; App. 133). Inside the wardrobe he located Ms. Noren’s purse, opened it, and searched its contents, finding a pill bottle with a brown substance he believed to be heroin, and unidentified pills. (23:20; App. 123). Officer Nettesheim continued to search the wardrobe and found another bag containing additional prescription bottles, loose pills, and straws that he believed were used to ingest heroin. (23:20-21; App. 123-124).

Officer Nettesheim testified that it usually takes a few minutes for EMS to stabilize the individual inside of the ambulance, (23:29; App. 132), and that when he found the suspected heroin and pills he went to the ambulance to pass the information to the EMS. (23:17; App. 120). However, Officer Nettesheim was not able to confirm what the brown

substance and pills that he found were until he took them back to the police station for testing and identification. (23:24; App. 127). Officer Nettesheim testified that he did not recall any specific instances during a suspected overdose when EMS has requested that he search the area to look for the source of the overdose. (23:27; App. 130).

After the close of testimony, the circuit court took a break to read the briefs submitted in a different, but analogous case in Walworth County. (23:32; App. 135). The circuit court concluded the briefs in that matter should be incorporated into the present case because of the similarity in fact and law. (23:33; App. 136).

The circuit court concluded that the “emergency doctrine established under Prober[]” was the correct legal standard under which to analyze the facts in this case. (20:36; App. 139). The circuit court found both of the officers’ testimony credible, and without objection from the defense, it found that Officer Nettesheim’s search was motivated by his perception that he needed to do so in order to render aid to Ms. Noren. (23:38-39; App. 141-142).

The circuit court then concluded that the search of the wardrobe and purse was reasonable because “a reasonable person would search in the area that would provide them an answer as to why this person is blue faced, lying on the kitchen floor.” (23:43; App. 146). In coming to this conclusion, the circuit court noted that the officer has been told that providing information about the substance consumed is helpful to EMS and other medical personnel. (23:43; App. 146). The circuit court also noted that it was reasonable to believe that there were additional drugs present. (23:43; App. 146).

In relation to the scope of the search, the circuit court found that it was limited to the emergency because the officer only searched the bedroom, where it would be reasonable to believe drugs would be kept. (23:44; App. 147). Accordingly, based on its findings of reasonableness and a limited scope, the circuit court denied the motion to suppress the evidence. (23:44; App. 147).

Following the court's denial of her suppression motion, Ms. Noren pled guilty to one count of possession of narcotic drugs as charged in the information. (13:1). The circuit court withheld the sentence and placed Ms. Noren on probation for a period of three years, with imposed and stayed conditional time. (14:1; App. 101).

This appeal follows.

## **ARGUMENT**

I. The Emergency Doctrine Did Not Justify The Search of Ms. Noren's Wardrobe and Purse Because The Officer Was Aware of the Likely Cause of the Overdose, And The Items Searched Were Not In Proximity to the Emergency.

A. Introduction and standard of review.

The Fourth Amendment to the United States Constitution protects the rights of citizens against unreasonable searches and seizures. The Wisconsin Constitution contains a substantively identical provision, art. I, sec. 11, and is interpreted consistently with the Fourth Amendment. *State v. Richter*, 2000 WI 58, ¶ 27, 235 Wis. 2d 524, 612 N.W.2d 29. "Warrantless searches 'are per se unreasonable under the Fourth Amendment subject only to a few specifically established and well-delineated exceptions.'"

*State v. Prober*, 98 Wis. 2d 345, 351, 297 N.W.2d 1 (1980). (overruled not on the emergency doctrine, but on whether an inventory search justified the search); citing *Katz v. United States*, 389 U.S. 347, 357 (1967). The exceptions to the warrant requirement are “carefully and jealously drawn.” *Prober*, 98 Wis. 2d at 351; citing *Jones v. United States*, 357 U.S. 493, 499 (1958).

One such exception to the warrant requirement is the emergency doctrine. *State v. Pires*, 55 Wis. 2d 597, 604, 201 N.W.2d 153 (1972). In that case, the Wisconsin Supreme Court approved an “emergency doctrine” exception that allows officers to make warrantless entries and searches when there is a reasonable belief that a person is in need of aid. *Id.* The emergency doctrine is a two-step test, and both parts must be met in order for the emergency doctrine to justify a warrantless entry or search. *Prober*, 98 Wis. 2d at 365. The first step is a subjective test, which requires that the officer searching actually be motivated by a perceived need to render assistance. *Id.* The second step is an objective test, which requires that a “reasonable person under the circumstances would have thought an emergency existed[.]” *Id.*

Here, the circuit court found that Officer Nettesheim’s search was motivated by his perception that Ms. Noren was in need of aid. (23:38-39; App. 141-142). Ms. Noren does not challenge the circuit court’s findings regarding Officer Nettesheim’s motivation. Ms. Noren agrees that Officer Nettesheim’s perception that she needed assistance motivated his search, however, she disputes the circuit court’s ruling that the scope of the search was reasonable. Therefore, the issue in this case is confined to the circuit court’s findings and conclusions regarding the objective test portion of the emergency doctrine.

When reviewing a circuit court's denial of a suppression motion, this court upholds a circuit court's factual findings unless they are clearly erroneous. *State v. Larsen*, 2007 WI App 147, ¶ 14, 302 Wis. 2d 718, 736 N.W. 2d 211. Whether or not the facts satisfy the constitutional requirements is a question of law that this court reviews de novo. *Id.*

B. Applicable legal principles.

Motivation to render aid in an emergency situation does not give law enforcement license to conduct broad, limitless searches. *Pires* 55 Wis. 2d at 606. The Wisconsin Supreme Court cautioned that the “emergency doctrine must be strictly construed so as to keep the warrantless intrusion as limited as possible.” *Prober*, 98 Wis. 2d at 362; citing *Pires*, 55, Wis. 2d at 606; *LaFournier v. State*, 91 Wis.2d 61, 68, 280 N.W.2d 746 (1979). Adherence to the Court’s mandate that the doctrine be strictly construed requires that there be a direct relationship between the area to be searched and the emergency itself. *Prober*, 98 Wis. 2d at 362; citing *People v. Mitchell*, 39 N.Y.2d 173, 179, 347 N.E.2d 607 (1976).

As in other Fourth Amendment cases, the determination as to whether the objective test of the emergency doctrine has been met turns on the reasonableness of police actions. It is the need to assist that supplies reasonableness, not the need to gather evidence. *Pires*, 55 Wis. 2d at 604. The reasonableness of police action is determined by whether under the totality of the circumstances a reasonable person would have believed that (1) there was an immediate need to provide aid or assistance to a person due to actual or threatened physical injury; and (2) that immediate entry into an area in which a person has a reasonable expectation of privacy was necessary in order to provide that

aid or assistance. *State v. Boggess*, 115 Wis. 2d 449, 452, 340 N.W.2d 516 (1983).

C. The officer's search of Ms. Noren's wardrobe and purse exceeded the scope of the limited search that the emergency doctrine permits because the officer was already aware of the likely source of her medical situation and the searched location was not in proximity to her person.

1. Officer Nettesheim's entry into the bedroom was unreasonable because there was not an immediate need to provide assistance.

There is no dispute that a drug overdose presents an emergency situation sufficient to justify police entry. *LaFournier*, 280 Wis. 2d at 68. Likewise, in this case there is no dispute that the officers' entry into Ms. Noren's apartment was lawful, as her nephew, with whom she lived, called 9-1-1 and allowed them to enter. (23:14). However, while an overdose situation may also justify a search, it will not justify a broad search. *Prober*, 98 Wis. 2d at 362 (internal citation omitted). (Where the search is limited to an area directly related to the emergency).

Here, the circuit court found that the entry into Ms. Noren's bedroom was reasonable because doing so "was necessary to abate the emergency." (23:43; App. 146). The entry into Ms. Noren's bedroom, however, was not objectively necessary to end the emergency because EMS was already on the scene and attending to her. (23: 7, 15; App. 110, 118).

Officer Nettesheim's entry into the bedroom in this case is analogous to the second entry into the home in *Pires*, 55 Wis. 2d 597, where the Court held that a subsequent entry and search was unreasonable. There, the police lawfully entered the home where it was reported that there was possibly a deceased infant and unconscious woman. *Id.* at 600. An ambulance arrived and took the woman, the infant, and the defendant to the hospital. *Id.* at 601. The responding officers did not take anything from the home. *Id.*

Additional officers responded and were aware that the victims were no longer in the home. *Id.* Nonetheless, they searched and took possession of inculpatory writings found in a bedroom. *Id.* at 601-602. The Court suppressed the evidence obtained by the second group of officers because the application of the emergency rule dissipated when they became aware that no one was present in the home. *Id.* at 606-607.

The same rationale should be applied to this case. Like the second group of officers in *Pires* being aware that the victims were no longer in the home, Officer Nettesheim was aware that EMS were on the scene attending to Ms. Noren and that they were getting ready to transport her to the hospital. (23:15,29; App. 118, 132). Although Ms. Noren was still in need of medical treatment, the emergency component of the situation had dissipated because she was receiving emergency medical care and the information about her having likely consumed heroin had already been provided to EMS. (23:10; App. 113). Therefore, just as the Court in *Pires* suppressed evidence found after the emergency dissipated, this court should also suppress the evidence found because entry into the bedroom was unnecessary to abate the emergency.

2. There was no immediate need to search the closed wardrobe and purse because police had already learned that the likely cause of Ms. Noren's condition was a heroin overdose.

Here, the circuit court found that the search of Ms. Noren's bedroom was justified because "a reasonable person would search in an area that would provide them a better answer as to why the person is blue in the face. (23:43; App. 146). However, the circuit court failed to consider the detailed information regarding the cause of Ms. Noren's unconsciousness, which was known to the officers prior to Officer Nettesheim's search of the bedroom.

"The objective component of the emergency rule requires that the officer 'point to specific facts that, taken with the rational inferences from those facts, reasonably warranted the intrusion into an area in which a person has a reasonable expectation of privacy.'" *State v. Rome*, 2000 WI App 243, ¶ 16, 239 Wis. 2d 491, 620 N.W.2d 225; *quoting Boggess*, 115 Wis. 2d at 451. "The necessity of reasonable grounds to believe that an emergency existed must be applied to the circumstances then confronting the officer, including his or her need for a prompt evaluation of possibly ambiguous information concerning potentially serious consequences." *Id.*

In *Rome*, officers encountered a woman walking on the street, carrying a baby, at 2 a.m. in December. 239 Wis. 2d 491, ¶ 2. The woman reported that her husband was intoxicated and had been yelling and threatening her during an argument over the children. *Rome*, 239 Wis. 2d 491, ¶ 3. Officers informed the woman that they needed to go to the home, and she informed them that her husband was home and

that she was concerned for her two-year old daughter's safety. *Id.*

Officers entered the home and called out for the defendant, but received no response. *Id.* ¶ 4. The found the defendant asleep in a bedroom and placed him in handcuffs for safety. *Id.* ¶ 6. The officers noticed a light flickering in the closet and believed that the two-year old may be inside, but instead of a child, they found a marijuana plant. *Id.* ¶ 6.

The officers only knew that Rome was intoxicated and that the argument had been sufficient enough to drive his wife out of the house at 2 a.m. in December with an infant. *Id.* ¶ 17. The court determined that it was reasonable for the officers to believe that the child remaining in the home would be in danger, and therefore upheld the search of the closet on the basis that the emergency doctrine applied because it was reasonable to believe the child may be hiding in the closet due to the parents' loud argument. *Id.* ¶ 18.

Likewise, in *Boggess*, the Court upheld a warrantless entry into a home where the police and social services had received a report of children possibly being battered and having injuries. 115 Wis. 2d at 445-446. The court reasoned that the information confronting the officers would have led a reasonable person to conclude that an emergency existed and that entry into the home was necessary to render aid. *Id.* at 451-452.

The circumstances in *Boggess* and *Rome* are distinguishable from the present case. Here, there was no ambiguity with regards to the information the officers received. Unlike in *Boggess* and *Rome*, where officers were told that children might be in danger, and had to enter the home and search to first determine whether there was an emergency, a search was unnecessary in this case. Here, the

officers responded and were allowed entry into to the home for an identified medical emergency. From the time they arrived at the residence, officers knew that Ms. Noren was unconscious and that she had likely ingested heroin. (23:6; App. 109 ). In addition to informing officers as to the likely cause of Ms. Noren's unconsciousness, Mr. Harris explained why he believed that to be the case. (23:6; App. 109). Specifically, he told officers he knew she used heroin as he had seen her use it in the past, and that she had recently overdosed. (23:6; App. 109).

Moreover, Officer Nettesheim had had similar dealings with Ms. Noren a few weeks earlier. (23:16; App. 119). Therefore, he was familiar with her drug use and would have been able to identify her. Although Officer Nettesheim was aware that it is useful for EMS to know the likely cause of a person's medical condition, (23:24; App. 127), none of the officers searched prior to the arrival of EMS. (23:14; App. 117). Instead, Officer Nettesheim attended to Ms. Noren while Officer Spatz spoke with Mr. Harris. (23:4; App. 107). However, the officers did not need to search the bedroom because they were aware of the cause of Ms. Noren's condition and were able to relay that information to the EMS immediately. There is nothing in the record that indicates that EMS asked for any verification or that they indicated that it did not appear to be a heroin overdose and to look for other causes. Unlike *Boggess* and *Rome*, here there was no ambiguity that necessitated further search for the cause of Ms. Noren's condition.

The search of the wardrobe and purse, therefore, was not objectively necessary to render aid or assistance to Ms. Noren because a search would not have provided officers with more information that they already had, and medical personnel did not indicate that additional information about

what Ms. Noren ingested was needed to provide her with medical assistance.

3. The search of the bedroom was unreasonable because it was outside the immediate area where officers found Ms. Noren.

The search of Ms. Noren's closed wardrobe and her purse, which was also located in the wardrobe, was also unreasonable because the area searched extended beyond the immediate area of the emergency. **Prober**, 98 Wis. 2d at 362 (internal citation omitted). (Where the search is limited to an area directly related to the emergency). The circuit court concluded that the search of the bedroom was reasonable because that is where drugs may be found. (23:44; App. 147). However, drugs may be found in any location on a property, and in any type of container. The emergency doctrine, however, does not allow broad searches based on where something might be found. **Prober**, 98 Wis. 2d at 362; *citing Pires*, 55, Wis. 2d at 606; **LaFournier v. State**, 91 Wis.2d 61, 68, 280 N.W.2d 746 (1979).

In **LaFournier**, 91 Wis. 2d at 71, the Court authorized the seizure of evidence in plain view. There, an officer responded to a call reporting a drug overdose. **Id.** at 65. He entered the residence and found a woman unconscious and saw drug paraphernalia on the floor by the woman. **Id.** He called for an evidence technician while he transported the woman to the hospital. **Id.** Three additional officers responded, entered, and seized the contraband. **Id.** The Court upheld the seizure of the evidence by the officers that entered after the original officer left because they did no more than that officer would have been justified in doing. **LaFournier**. 91 Wis. 2d at 70. It concluded that "[w]here the first officer

in rendering assistance to the victim could not preserve that evidence, an immediate entry by other officers without warrant, *restricted in nature and scope* to securing the evidence in plain view, was lawful.” *Id.* at 71. (emphasis added).

The Court did not authorize the officers in *LaFournier* to search beyond the immediate area where the victim was found. Likewise, this court should not authorize the search in this case, as it went beyond the scope of the emergency. Here, Ms. Noren was found unconscious in the kitchen. (23:4; App. 107). There was nothing in plain view in the area where she was found. (23:18-19; App. 121-122). A search of her bedroom went beyond the scope of any permissible search. Moreover, as argued above, the officers knew that she had likely ingested heroin, which would be as helpful as seeing paraphernalia in plain view to provide the officer with information about the cause of the medical condition.

Following the circuit court’s logic that a bedroom is a reasonable place to find drugs, requires this court to expand what is supposed to be a well-delineated and the limited scope exception to the warrant requirement. *Prober*, 98 Wis. 2d at 362; *citing Pires*, 55, Wis. 2d at 606; *LaFournier*, 91 Wis.2d at 68. Accordingly, this court should find that under the totality of the circumstances, the search of Ms. Noren’s wardrobe and purse was unreasonable.

## **CONCLUSION**

For the reasons stated in this brief, Ms. Noren respectfully requests that the court reverse the circuit court's decision denying her motion to suppress the evidence resulting from the illegal search.

Dated this 13<sup>th</sup> day of January, 2016.

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 3,792 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 13<sup>th</sup> day of January, 2016.

Signed:

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## **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; (3) a copy of any unpublished opinion cited under § 809.23(3)(a) or (b); and (4) 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 one or more initials or other appropriate pseudonym or designation 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 13<sup>th</sup> day of January, 2016.

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# **APPENDIX**

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