

**RECEIVED**

**09-10-2018**

**CLERK OF COURT OF APPEALS  
OF WISCONSIN**

STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT II

---

STATE OF WISCONSIN,  
Plaintiff-Respondent,

Case No. 2018AP926 CR

v.

TROY K. KETTLEWELL  
Defendant-Appellant.

---

BRIEF OF PLAINTIFF-RESPONDENT

---

ON NOTICE OF APPEAL FROM THE JUDGMENT OF CONVICTION  
ENTERED IN THE WINNEBAGO COUNTY CIRCUIT COURT  
THE HONORABLE DANIEL J. BISSETT, PRESIDING

---

**Christian A. Gossett**  
District Attorney  
State Bar No. 1040212

Attorneys for Plaintiff-Appellant

**Adam J. Levin**  
Assistant District Attorney  
State Bar No. 1045816

Winnebago County Dist. Atty's Office  
448 Algoma Boulevard, Second Floor  
P O Box 2808  
Oshkosh, WI 54903-2808  
(920) 236-4977

## **Table of Contents**

Statement of Issue Presented for Review	1
Statement on Oral Argument and Publication	1
Statement of the Case	1
Argument	1
Conclusion	3
Certification	5

## Cases Cited

<i>State v. Dumstrey</i> , 2016 WI 3	1
<i>State v. Gracia</i> , 2013 WI 15	2-3

## **I. Statement of Issues Presented for Review**

- 1) Whether Deputy Schuh acted as community caretaker when he knocked on a window of the residence where the defendant was found?

Trial Court Answered: Yes.

## **II. Statement on Oral Argument and Publication**

The State is requesting neither publication nor oral argument, as this matter involves only the application of well-settled law to the facts of the case.

## **III. Statement of the Case**

The State believes Mr. Kettlewell's recitation of the facts of the case is sufficient, and pursuant to Wis. Stat. 809.19(3)(a)(2), omits a repetitive statement of the case.

## **IV. Argument**

"The protection provided by the Fourth Amendment to a home also extends to the curtilage of a residence. The curtilage is the area to which extends the intimate activity associated with the sanctity of a [person's] home and the privacies of life and therefore has been considered part of [the] home itself for Fourth Amendment purposes." *State v. Dumstrey*, 2016 WI 3, ¶ 23 (internal citations omitted).

The State concedes that Officer Schuh walking behind the residence, peering into windows, looking for the defendant, was within the curtilage of the residence, and as such, either a warrant, or an exception to the warrant requirement, was necessary for such a search to be lawful. In this case, the community caretaker exception to the warrant requirement renders the search lawful.

¶14 The community caretaker exception is analyzed in the same manner under both the state and federal constitutions. This court looks at the totality of the circumstances as they existed at the time of the police conduct.

¶ 15 This court recently interpreted the community caretaker function of police in *State v. Pinkard*, 2010 WI 81. That case laid out a three-step test, with four relevant factors in deciding the third step, placing the burden of proof on the State. *Id.* ¶ 29. The steps are as follows:

(1) [W]hether a search or seizure within the meaning of the Fourth Amendment has occurred; (2) if so, whether the police were exercising a bona fide community caretaker function; and (3) if so, whether the public interest outweighs the intrusion upon the privacy of the individual such that the community caretaker function was reasonably exercised within the context of a home.

*Id.* ¶ 29. In examining the third step, “we balance the public interest or need that is furthered by the officers' conduct against the degree and nature of the intrusion on the citizen's constitutional interest.”

*Id.* ¶ 41. The four factors considered in this balancing test are as follows:

(1) [T]he 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.

*State v. Gracia*, 2013 WI 15.

Applying these factors, the trial court found (and the record amply supports) that 1) a search occurred; 2) the police were exercising a bona fide community caretaking function, and 3) the public interest outweighed the intrusion upon the privacy of the individual. R51:PP16-21. In short, knocking on a curtilage window after discovery of a car in a ditch with airbags deployed is a search, in the course of bona fide community caretaking, and the public interest in police attending to a crash in this matter outweighs the intrusion upon the privacy of an individual.

## **V. Conclusion**

For the reasons set forth above, Deputy Schuh acted as a bona fide community caretaker in knocking on a curtilage window which discovered the defendant. The trial court did not err in so finding.

Dated at Oshkosh, Wisconsin this September 6, 2018.

By: \_\_\_\_\_  
Adam J. Levin  
WSBA No. 1045816  
Assistant District Attorney  
Winnebago County, Wisconsin  
Attorney for the Respondent

## **CERTIFICATIONS**

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 494 words.

I further certify pursuant to Wis. Stat. § 809.19(b)(12)(f) that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief

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 person, 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.

I further certify that on the date of signature I routed this brief to our office station for first class US Mail Postage to be affixed and mailed to:

**Clerk's Office (10 copies)**  
Wisconsin Court of Appeals  
110 East Main Street, Suite 215  
P.O. Box 1688  
Madison, WI 53701-1688

**Cole Ruby (3 copies)**  
144 Fourth Avenue, Suite 2  
Baraboo, WI 53919

Dated at Oshkosh, Wisconsin this September 6, 2018.

---

Adam J. Levin  
Bar No. 1045816  
Assistant District Attorney  
Winnebago County, Wisconsin