STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Case No. 2018AP1762-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JESSE J. JENNERJOHN,

Defendant-Appellant.

ON APPEAL FROM THE JUDGMENT
OF CONVICTION, ENTERED IN THE
OUTAGAMIE COUNTY CIRCUIT COURT, THE
HONORABLE MITCHELL J. METROPULOS, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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STATEMENT OF THE ISSUE

Did the police lawfully enter and search Jesse Jennerjohn's home after they had detained Jennerjohn outside?

The circuit court concluded that the entry and search was lawful under the community caretaker and protective sweep exceptions to the warrant requirement.

This Court should affirm.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request oral argument or publication. The issue presented can be resolved by applying the well-established test for the community caretaker exception to the facts of the case.

INTRODUCTION

In responding to a citizen complaint involving Jennerjohn, officers encountered an evolving situation that led them to believe that Jennerjohn was injured, mentally unstable, and dangerous. After officers successfully convinced Jennerjohn to come out of his home, he ignored the officers' commands and yelled "just shoot me." An officer tased Jennerjohn and detained him in his driveway.

Soon after they detained Jennerjohn, officers opened the door to his home, entered, and swept it. In doing so, they discovered a significant amount of marijuana in a hallway closet.

The State later charged Jennerjohn with possession with the intent to deliver tetrahydrocannabinols. Jennerjohn moved to suppress the drug evidence on grounds that the entry and search of his home were unlawful. The circuit court denied Jennerjohn's motion, concluding that the entry and

search were lawful under the community caretaker and protective sweep exceptions to the warrant requirement.

The circuit court's decision was correct. While the officers had a multitude of concerns in this case, it is undisputed that the officers did not enter Jennerjohn's home with an investigatory purpose. Rather, officers entered the home to ensure that there was no one else in the home in need of assistance and to secure any firearms due to officers' concerns that Jennerjohn was dangerous to himself and others. This Court should affirm.

SUPPLEMENTAL STATEMENT OF THE CASE

In the evening hours of November 29, 2017, Officer Dominic Hall was dispatched to Grumpy's Pub on a report that a man, later identified as Jennerjohn, was at the bar throwing things and trying to start a fight. (R. 31:4–5.) When Hall arrived, he spoke with two female bartenders who told him that they had kicked Jennerjohn out of the bar, twice, and he left by car. (R. 31:5.) Before driving off, however Jennerjohn rummaged through his trunk and told the bartenders that he had "warned them" and they "better run." (R. 31:5–6.) The bartenders took Jennerjohn's threats seriously; they returned to the bar and locked the door. (R. 31:6.)

One of the bartenders was able to write down Jennerjohn's license plate, which Officer Hall relayed through dispatch. (R. 31:6.) A records check revealed the car was registered to Jennerjohn. (R. 31:7.) Officer Nicholas Meyer went to the address and found the car parked in the driveway. (R. 31:50.) He drove by and parked down the block. (R. 31:60.) Shortly thereafter, he saw a man leave the home, who he believed was Jennerjohn. (R. 31:60.)

Officers Hall and Alyssa Blankenship and Lieutenant Carlos del Plaine arrived a short while later. (R. 31:66.)

Officer Hall spoke with other officers in the area regarding a plan for approach. (R. 31:7.) Hall needed to speak with Jennerjohn to get his side of the story, and to inform Jennerjohn that he was not to return to Grumpy's Pub. (R. 31:43.) However, due to Jennerjohn's threatening actions at the bar and uncertainty about whether Jennerjohn was armed and alone, Hall had officer safety concerns. (R. 31:7–8.)

The officers formulated an approach plan and began to walk to Jennerjohn's address. (R. 31:8.) Hall saw a man, again later identified as Jennerjohn, and woman, later identified as Lisa Walker, standing outside of the house neighboring Jennerjohn's. (R. 31:8.) As the officers got closer, Jennerjohn saw the officers and quickly turned and ran toward his home. (R. 31:8–9.)

Officer Hall ran after Jennerjohn and yelled for him to stop. (R. 31:9.) Jennerjohn did not stop and ran into his home. (R. 31:9.) Officer Blankenship stopped and spoke with Lisa. (R. 32:48.) Lisa testified that she told Blankenship that Jennerjohn lived alone, but Blankenship could not remember if she relayed that information. (R. 32:48.)

Officers positioned themselves around the home, and Officer Meyer positioned himself behind Jennerjohn's car. (R. 31:51.) From that vantage point, he saw a rifle case in the backseat area, but could not tell if the rifle was in the case. (R. 31:51–52.)

Officer Hall was positioned at the front of the house and knocked on Jennerjohn's door for several minutes, announcing that he was an officer and that he wanted to talk to Jennerjohn. (R. 31:11.) Through a window, Officer Meyer saw Jennerjohn walk from a back bedroom to the front living room several times, but Jennerjohn never answered the door or spoke with Hall through the closed door. (R. 31:11–12, 51.)

Lieutenant del Plaine, the supervising officer, discussed with Officer Hall whether they should do a "snatch and grab"[1] or negotiate with Jennerjohn through the door. (R. 32:65–66.) The officers decided to try to negotiate with Jennerjohn. (R. 32:66.) At that time, the officers had no plan to arrest Jennerjohn. (R. 32:67.)

After 10 to 15 minutes, Officer Hall went to the neighboring home and spoke with Lisa. (R. 31:12–13.) Lisa told Hall that Jennerjohn came to her home with a cut hand, asking for help. (R. 31:13.) Lisa noticed that Jennerjohn's hand was bleeding a lot and bandaged it. (R. 31:13–14.) She believed Jennerjohn was drunk and mentally ill. (R. 31:14.) Jennerjohn was very agitated and told Lisa that he wanted to get his gun and go back and shoot a man. (R. 31:14; 32:9.) Hall believed that Lisa meant that Jennerjohn was saying that he wanted to go back to the bar to shoot a man, but he was not certain. (R. 31:48.)

Officer Craig Rohm, who arrived at the scene later, called Dawn De Guelle, who he knew to be Jennerjohn's trusted friend. (R. 32:31–32, 51–52.) Dawn called Jennerjohn's brother Larry, and the two decided to drive to Jennerjohn's home to assist the officers. (R. 32:32–33.) While traveling, Larry called Jennerjohn and both Larry and Dawn spoke to him. (R. 32:33.) Jennerjohn told Dawn that his foot hurt and that he needed medical attention. (R. 32:33.) He also told Dawn that he was alone, just wanted to go to sleep, and wanted the police to stop bothering him. (R. 32:33–34.)

Dawn called Officer Rohm back, told him that Jennerjohn was alone, and that she was trying to convince Jennerjohn to come out of the house so the police could talk to

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[1] A snatch and grab involves officers grabbing someone who comes to the door, taking them out of the house, patting them down, and then sitting the person down to speak with them. (R. 32:65–66.)

him. (R. 32:34.) Dawn said that she told Rohm that Jennerjohn was alone because she knew that Rohm had contact with Jennerjohn two months prior because a houseguest had refused to leave. (R. 32:34, 37.) At the time of the suppression hearing, Rohm did not have any recollection of Dawn telling him that Jennerjohn was alone. (R. 32:54–55.)

When Jennerjohn finally came out of his home, he made "loud, aggressive, grunting, guttural noises," ignored officers' commands to stop, and yelled, "Just shoot me." (R. 31:74; 32:73.) Jennerjohn continued to walk toward the officers; the officers tased and detained him. (R. 31:74.)

Officer Hall initially stayed with Jennerjohn. (R. 31:15–16.) Hall was concerned for Jennerjohn's well-being, but also needed to discuss what had happened at the bar to discern if Jennerjohn remained a threat. (R. 31:16.) In talking with Jennerjohn, Hall asked if anyone or any pets were still inside the home. (R. 31:17.) Jennerjohn said there was not, but Hall questioned the reliability of that statement based upon Jennerjohn's inability to provide a straight and complete answer to other basic questions. (R. 31:17–18.) Hall admitted that there was no indication that anyone else was inside the home. (R. 31:29.) But if there was, Hall stated, there would be dual concerns about their well-being and the threat to officer safety. (R. 31:44–45.) Officer Meyer, who also spoke with Jennerjohn, echoed that concern. (R. 31:75.)

Officer Hall knew that Jennerjohn's behavior at the bar involved other individuals, and that Jennerjohn wanted to shoot someone, but he did not know if anyone followed Jennerjohn home. (R. 31:46–47.) He also did not know how Jennerjohn came to have a cut hand, i.e., whether it was self-inflicted or caused by someone else. (R. 31:47.)

Officer Meyer was one of the officers that conducted the sweep. After Jennerjohn was detained, he went to the front door, opened it, and announced himself several times.

(R. 31:55; 32:27.) Meyer did not enter immediately, he waited for Lieutenant del Plaine's decision on whether to sweep the home. (R. 32:71.)

Lieutenant del Plaine decided to sweep the home because "Jennerjohn's behavior was so over the top." (R. 32:73.) Jennerjohn was intoxicated and upset, he refused to make any contact with the officers, and the situation escalated to a point of Jennerjohn yelling for the police to just shoot him. (R. 32:73.) del Plaine was concerned that Jennerjohn's over-the-top behavior may have been caused by someone in the home. del Plaine was also concerned that Jennerjohn would have access to weapons in the home. (R. 32:74.) Furthermore, del Plaine wanted to make sure that the home was safe since Larry and Dawn were on the scene and they would have access to it after the officers left. (R. 32:74.) del Plaine believed that conducting the sweep was the "prudent thing to do." (R. 32:74.)

In conducing the sweep, Meyer looked in areas where a person could hide; he was not investigating a crime nor looking for drugs. (R. 31:56, 58; 32:28.) He came to a door in the hallway, and not knowing what the door led to, he opened it. (R. 31:56.) It was a closet, and inside were 12 large mason jars of marijuana. (R. 31:57.)[2]

Officers also found guns in Jennerjohn's home, which they gave to Larry and Dawn for safekeeping. (R. 32:43–44, 59.)

Jennerjohn was transported to a local hospital. There, Officer Hall cited Jennerjohn for disorderly conduct and gave him a warning for obstruction. (R. 12:5.) The police did not arrest Jennerjohn. Hall requested that Jennerjohn be evaluated by an Outagamie County Crisis worker. (R. 12:2.)

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[2] The marijuana was not seized at that time. The seizure occurred when the police later executed a search warrant. (R. 2:2.)

The crisis worker spoke to Jennerjohn and determined that an emergency, 72-hour detention was appropriate. (R. 12:5.)

Medical personnel later determined that, at the time of the incident, Jennerjohn was suffering from the effects of bipolar disorder and schizoaffective disorder. (R. 33:10.) Because those disorders where undiagnosed at that time, Jennerjohn was not properly medicated. (R. 33:11, 14.)

A little over a month after the discovery of the marijuana, the State charged Jennerjohn with one count of possession with intent to deliver tetrahydrocannabinols. (R. 2:1.) He was not arrested for that offense, rather he was issued a summons, and was released on a signature bond at his initial appearance. (R. 1; 28:3.)

Jennerjohn filed a motion to suppress the drug evidence. (R. 7.) The court held a two-day suppression hearing,[3] (R. 31; 32) and the State argued that the entry and search of Jennerjohn's home was lawful under the community caretaker and protective sweep exceptions to the warrant requirement (R. 32:76–81). The court agreed and denied the motion. (R. 32:97–102.)

Applying the three-prong test for the community caretaker exception to the warrant requirement, the court concluded that while a search had occurred, the officers reasonably executed a bona fide community caretaker function. (R. 32:97–102.) The court reasoned that "there [were] multiple reasons that law enforcement was concerned with regards to getting inside the residence" including that someone may be inside the residence and that Jennerjohn may have access to firearms. (R. 32:98–99.) Jennerjohn had made threats at Grumpy's pub, he then told his neighbor Lisa

[3] The State has used the testimony from the suppression hearing to provide a narrative of what occurred that evening in the State's Supplemental Statement of the Case.

that he wanted to shoot someone. (R. 32:98–99.) The officers had enough to suspect that Jennerjohn had access to firearms because there was a rifle case in his car. (R. 32:99.) The officers also had enough to conclude that Jennerjohn was mentally unstable and intoxicated. (R. 32:99.) Jennerjohn's actions with the officers were "unusual" and "concerning" and "could be construed as suicidal." (R. 32:99.) While there was information that Jennerjohn lived alone, his behavior, threats, and unexplained injury to his hand were sufficient to evince a "legitimate concern, that there had been a disturbance within the residence." (R. 32:100.) The court explained:

> [W]e're talking about the community caretaker function -- I think all they have to do is show that that is a possibility, it's a reasonable possibility; and with someone who is injured, who apparently was treated by a neighbor, that is acting this disorderly, not paying attention to verbal commands of law enforcement, who has made threats to others, that that was a genuine concern that someone in the residence could have either been a victim, could have been another danger to the officers and to other members of the public.

(R. 32:100.)

The court then concluded that police reasonably exercised the community caretaker function by conducting a sweep of Jennerjohn's home. (R. 32:101–02.) The sweep was "close to the time of the custodial situation" and the "officers were clearly looking for other individuals . . . they did not . . . open any containers, [or] drawers, where a person would not be." (R. 32:101–02.) It would have been unreasonable for the officers to just yell into the home for anyone to identify themselves:

> If an injury to the defendant that was unexplained, threats made by that same defendant, concern that someone in the home may have been incapacitated and in need of help, can you imagine the lawsuit that

> would be made by that person's family had law enforcement investigated this case, were at the doorstep, but did not carry out the function of community caretaker and let someone die when they could have addressed that need. So we really have to weigh the public interest versus this defendant's privacy right, he does have a privacy right, but on these circumstances, given the behaviors by the defendant, I believe the police exercised that community caretaker exception in a reasonable manner.

(R. 32:102.)

The State then offered Jennerjohn a generous plea deal—in exchange for a plea of no contest, the State would recommend three years' probation. (R. 33:2, 17.) Jennerjohn agreed, he pled no contest, and the court ordered a two-year probation term with no jail time, despite the fact that Jennerjohn was a "mid-level" drug dealer. (R. 33:6, 15–17.)

Jennerjohn appeals the court's suppression decision.

STANDARD OF REVIEW

In reviewing the denial of a motion to suppress evidence, this Court will uphold a circuit court's findings of historical fact unless they are clearly erroneous, but independently reviews the circuit court's application of constitutional principles to those facts. *See*, *e.g.*, *State v. Pinkard*, 2010 WI 81, ¶ 12, 327 Wis. 2d 346, 785 N.W.2d 592.

ARGUMENT

To set the stage, there were two Fourth Amendment searches here, but only one that matters. First, Officer Meyer's opening of the door to Jennerjohn's home was a search, but police discovered nothing as a result of that search. The second search is the one at issue—the officers' entry into and search of the home. The officers referred to that search as a "protective sweep" but it was a sweep executed to

secure the home and to ensure that there was no other injured individuals inside. In this type of circumstance, the sweep is an extension of the community caretaker function of law enforcement. The question here is whether the sweep met the community caretaker exception to the warrant requirement. As established below, it does.

I. The police may perform warrantless searches when they are reasonably exercising a bona fide community caretaker function.

The federal and state constitutions protect against unreasonable searches and seizures. *Pinkard*, 327 Wis. 2d 346, ¶ 13. A police officer, serving as a community caretaker to protect persons and property, may be constitutionally permitted to perform warrantless searches and seizures. *Id.* ¶ 14 (citing *Cady v. Dombrowski*, 413 U.S. 433, 448 (1973)).

Although a multitude of activities fall within law enforcement's community caretaker function, not every intrusion that results from the exercise of a community caretaker function will fall within the community caretaker exception to permit a warrantless search of a home. *Pinkard*, 327 Wis. 2d 346, ¶ 20. Thus, whether a given community caretaker function will pass muster under the Fourth Amendment depends on whether the community caretaker function was reasonably exercised. *Id.*

Law enforcement may enter a residence and perform a sweep as community caretakers if the totality of the circumstances warrants it. *State v. Horngren*, 2000 WI App 177, ¶ 20, 238 Wis. 2d 347, 617 N.W.2d 508.

This Court applies a three-step test to determine whether an officer's conduct properly falls within the scope of the community caretaker exception. *Pinkard*, 327 Wis. 2d 346, ¶ 29. The courts must first determine if there was a search within the meaning of the Fourth Amendment. *Id.* If there was, the court must next determine if "the police were

exercising a bona fide community caretaker function" when the search occurred. *Id.* If so, the question remains "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.* The State bears the burden of proof on all three prongs. *Id*.

Courts should avoid "taking a too-narrow view' in determining whether the community caretaker function is present." *Pinkard*, 327 Wis. 2d 346, ¶ 33 (citation omitted). Further, community caretaker functions need not be totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute. *Pinkard*, 327 Wis. 2d 346, ¶ 31. In other words, even if the police officer has subjective law enforcement concerns, he or she may also be engaging in a valid community caretaker function. *Id*. As long as there is an objectively reasonable basis for the community caretaker function, the officer has met the standard of acting as a bona fide community caretaker. *See State v. Kramer*, 2009 WI 14, ¶ 30, 315 Wis. 2d 414, 759 N.W.2d 598.

Law enforcement's entry into and sweep of Jennerjohn's home was clearly a search within the meaning of the Fourth Amendment; for the reasons below, the second and third prongs are satisfied here.

A. When the police entered Jennerjohn's home and searched it, they were exercising a bona fide community caretaker function.

The "community caretaker" function, "while perhaps lacking in some respects the urgency of criminal investigation, is nevertheless an important and essential part of the police role." *Bies v. State*, 76 Wis. 2d 457, 471, 251 N.W.2d 461 (1977). Thus, the circumstances giving rise to the community caretaker function need not rise to the level of an emergency. *Pinkard*, 327 Wis. 2d 346, ¶ 26 n.8. Interpreting

bona fide community caretaker functions too narrowly could deter the "assistance role of law enforcement." *Pinkard*, 327 Wis. 2d 346, ¶ 33.

This Court must determine whether "*under the circumstances as they existed at the time of the police conduct*, [the officers were] engaged in a bona fide community caretaker function." *State v. Matalonis*, 2016 WI 7, ¶ 35, 366 Wis. 2d 443, 875 N.W.2d 567 (citation omitted). Thus, this Court is "concerned with the extent of the officers' knowledge at the time they conducted the search, not after." *Id.*

Law enforcement exercises a bona fide community caretaker function when officers respond to situations involving mentally unstable and dangerous individuals. *See, e.g., Horngren*, 238 Wis. 2d 347, ¶ 10–13 (discussing the community caretaker function of law enforcement officers in responding to a suicidal individual).

Here, while the officers did not enter and search Jennerjohn's home to detain him, they were nonetheless exercising a bona fide community caretaker function—the impetus of which was Jennerjohn's mental instability and dangerousness. Officer Hall was dispatched to Grumpy's Pub after receiving a complaint that Jennerjohn was acting irrationally and making threats. (R. 31:5–6.) Hall met with the two bartenders and learned that Jennerjohn was intoxicated and had made sufficient threats to the bartenders that led them to fear for their safety. (R. 31:5–8.)

Once officers arrived at Jennerjohn's residence, they learned from a neighbor that Jennerjohn was injured, behaving erratically, and preoccupied with what happened at the bar. (R. 31:8, 13–14.) He wanted to shoot someone. (R. 31:14.) And after officers successfully convinced Jennerjohn to come out of his residence, the officers believed that Jennerjohn was suicidal based upon Jennerjohn yelling "[j]ust shoot me" as he advanced toward the officers. (R. 32:73–74.)

The officers had no specific information indicating that there was anyone else inside of Jennerjohn's home. (R. 32:70–71.) Nonetheless, Lieutenant del Plaine decided to enter and search Jennerjohn's home based on Jennerjohn's "extreme escalation in his behavior." (R. 32:71–74.) That was a reasonable decision in the face of a complex situation: police had real, objectively reasonable concerns that Jennerjohn was a danger to himself and others. del Plaine had an objectively reasonable belief that the home contained firearms. Although police had detained Jennerjohn at that point, del Plaine did not know how long that detention would last.

Furthermore, police did not know if anyone else was in the home who may be in need of assistance. And under the circumstances, the police could not rule out that possibility. Notably, Jennerjohn had an unexplained injury, which could have been caused by an altercation in the home.

Under the totality of the circumstances, securing a residence and firearms of an individual who is behaving erratically, dangerous to himself and others, and who is not facing any criminal charges is a bona fide community caretaker function. To hold otherwise would ignore the warnings against "taking a too-narrow view" in determining whether a community caretaker function is present. *See Pinkard*, 327 Wis. 2d 346, ¶ 33.

B. The police exercised their bona fide community caretaker function reasonably.

To determine if law enforcement reasonably executed their community caretaker function, this Court "balance[s] the public interest or need that is furthered by the officers' conduct against the degree and nature of the intrusion." *Pinkard*, 327 Wis. 2d 346, ¶ 41. In so balancing, the court considers four factors, "(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.* ¶ 42 (citation omitted).

First, the degree of the public interest and exigency of the situation is weighty. Law enforcement was dealing with an injured, mentally unstable individual who made multiple threats to harm others, and who appeared to be suicidal. The public would be outraged if the officers simply ignored the level of dangerousness present here. Police had a significant public interest in ensuring both that no one was injured in the home and that Jennerjohn would not have access to firearms if he was released after receiving medical treatment.

Second, the search was conducted as soon as reasonably possible. This case is unlike *State v. Maddix*, 2013 WI App 64, ¶¶ 6–7, 27, 348 Wis. 2d 179, 831 N.W.2d 778, where officers launched a protective sweep of the apartment to look for another person after they had been in the home and talking to the occupants for over 30 minutes. And given the uncertainty around whether another individual was injured in the home and how long Jennerjohn would be detained, it was reasonable for the officers to search when they did.

The third factor, the automobile factor, is not relevant here.

Fourth, police had no feasible alternative to entering and sweeping Jennerjohn's home. Law enforcement could not get a warrant. There was no fact that would establish that Jennerjohn's home probably contained evidence of a crime. And as Jennerjohn points out multiple times in his brief, officers were not motivated by investigative concerns—the officers had no plans to charge Jennerjohn with any offense. Furthermore, it would have been objectively unreasonable for the officers to have Jennerjohn's brother or friend enter the home to secure the firearms not knowing if anyone else was

inside of the home. Law enforcement's only options were for the officer to sweep the home or to leave the home unsecured.

"Principles of reasonableness demand that we ask ourselves whether 'the officers would have been derelict in their duty had they acted otherwise.'" *Pinkard*, 327 Wis. 2d 346, ¶ 59 (citations omitted). If the officers had left the home without ensuring that there was no one inside in need of assistance and without securing Jennerjohn's firearms, "the citizens of the community would have understandably viewed the officers' actions as poor police work." *Id.* ¶ 59. "[I]t must be emphasized that the fact that, as it turned out, no one was injured is of no moment." *Id.* (citation omitted).

The officers reasonably executed a bona fide community caretaker function. This Court should affirm.

II. Even assuming that police violated the Fourth Amendment when they entered and searched Jennerjohn's home, exclusion is not an appropriate remedy under the circumstances.

"The primary purpose of the exclusionary rule 'is to deter future unlawful police conduct.'" *State v. Felix*, 2012 WI 36, ¶ 30, 339 Wis. 2d 670, 811 N.W.2d 775 (citations omitted). "It is a judicially-created rule that is not absolute, but rather requires the balancing of the rule's remedial objectives with the 'substantial social costs exacted by the exclusionary rule.'" *Id.* ¶ 30 (citations omitted).

The exclusionary rule is not universally applied to all Fourth Amendment violations. *Herring v. United States*, 555 U.S. 135, 141 (2009) ("We have repeatedly rejected the argument that exclusion is a necessary consequence of a Fourth Amendment violation. Instead we have focused on the efficacy of the rule in deterring Fourth Amendment violations in the future.") (citations omitted). Exclusion should always be the last resort, not the first impulse. *Hudson v. Michigan*, 547 U.S. 586, 591 (2006). While but-for causality is a

necessary condition for suppression, exclusion may not be based solely on the fact that the constitutional violation was the but-for cause of the discovery of the evidence. *Id*. at 592. The existence of deterrent benefit from the exclusion of evidence "is [the] necessary condition for exclusion." *Id.* at 595–96.

This case illustrates that law enforcement officers are oftentimes put in a position where it is uncertain where the bounds of the law lie. This is especially true when officers encounter a mentally ill or mentally unstable individual who poses a danger to themselves and others. In those situations, officers are acting in their community caretaker role. *See Horngren*, 238 Wis. 2d 347, ¶ 11. And officers should not be deterred in exercising that important community caretaking function. This is particularly true, such as in the instant case, when an officer does not have the option of obtaining a warrant. *See, e.g.*, *People v. Ray*, 981 P.2d 928, 939 (Cal. 1999).

As Jennerjohn points out, officers did not have any reason to believe that his home contained evidence of a crime. They did, however, have sufficient reasons to believe that Jennerjohn possessed firearms, that he was mentally unstable, and that, in his current condition, he was dangerous to himself and others. There was no guarantee that Jennerjohn would be detained until his condition improved. If officers did not enter the home to secure the firearms with Jennerjohn's friend and brother, the end result would be that the weapons remain in a location under Jennerjohn's control.

Thus, there are real and significant "social costs" of applying the exclusionary rule here. While Jennerjohn was detained outside of his home, police did not arrest him on suspicion of criminal charges. When Lieutenant del Plaine decided to enter and search Jennerjohn's home, he did not know how long Jennerjohn would be detained or otherwise prevented from accessing his guns, and a Chapter 51 emergency detention decision was not a forgone conclusion.

Given that, police had a significant public safety concern associated with Jennerjohn, in his untreated condition, having access to firearms.

What occurred here is not the type of flagrant misconduct that warrants the suppression of evidence. When there is an absence of any remedial value in applying the exclusionary rule and the important societal goals of public safety are furthered by the officers' conduct, "courts should not impose the severe penalty of suppression." *State v. Noll*, 111 Wis. 2d 587, 590, 331 N.W.2d 599 (Ct. App. 1983).

CONCLUSION

For the foregoing reasons, this Court should affirm.

Dated this 5th day of March, 2019.

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 4,801 words.

Dated this 5th day of March, 2019.

_____
TIFFANY M. WINTER
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 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. § 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 5th day of March, 2019.

_____
TIFFANY M. WINTER
Assistant Attorney General