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STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT III  
Case No. 2019AP1486 CR

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STATE OF WISCONSIN

Plaintiff-Respondent

v.

JESSE A. ROGALLA

Defendant-Appellant

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Defendant's Appeal from a Judgment of Conviction Entered  
in Marathon County Circuit Court, Honorable Gregory Huber  
Presiding

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BRIEF OF PLAINTIFF-RESPONDENT

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STATEMENT ON ORAL ARGUMENT AND  
PUBLICATION

Oral argument is not requested as it is anticipated that the briefs will adequately address all relevant issues.

## ARGUMENT

The Circuit Court properly held that Officer Klieforth's warrantless entry into Appellant's residence was reasonable under the safety exigent circumstance exception.

### A. Exigent Circumstances: Safety Exception to the Warrant Requirement

An exigent circumstance can fall into four categories, however, for the purpose of this case the State relies on the "...a threat to the safety of a suspect or others..." exception. *State v. Richter*, 2000 WI 58, ¶29 (citing *State v. Smith*, 131 Wis. 2d 220, 228, 388 N.W.2d 601 (1986)). This is an exception to the 4<sup>th</sup> Amendment of the United States Constitution, the standard of proof is "[w]hether a police officer under the circumstances known to the officer at the time [of entry] reasonably believes that delay in procuring a warrant would gravely endanger life or risk destruction of evidence..." *Id.* at ¶ 30.

In determining if an officer acted reasonably the officer may reasonably act on information known to the officer at the time and is not required to have "affirmative evidence of the presence of firearms or known violent tendencies on the part of the suspect before acting to protect the safety of others..." as that would be "...arbitrary and unrealistic and unreasonably handicap[s] the officer in one of his core responsibilities." *Id.* at ¶ 40. And "The absence of information about firearms or the propensities of the suspect, however, does not mean that no threat could possibly have been present." *Id.* "...we do not apply hindsight to the exigency analysis; we consider only the circumstances known to the officer at the time he made entry and evaluate the reasonableness of the officer's actions in light of those circumstances. *Id.* at ¶ 43 ((citing *State v. Smith*, 131 Wis. 2d 220, 230, 388 N.W.2d 601 (1986))).

In order for an officer's actions to be reasonable, they need not "always be correct, but that they must be reasonable." *Id.* (citing *Illinois v. Rodriguez*, 497 U.S. 177, 185 (1990)). *Richter*, further stated that "The exigency at issue here is the threat to physical safety." *Id.* This concept was further elaborated in *State v. Subdiaz-Osorio*, 2014 WI 87, ¶ 77, "...police do not have to have conclusive proof that a suspect is likely to harm someone in order to satisfy the exigent circumstances exception."

B. Officer Klieforth's Actions Were Reasonable Based on the Facts Known at the Time of the Warrantless Entry to Appellant's Residence

The Courts are clear and consistent that in a case with a warrantless entry into a home, the standard is the whether the facts known to the officer at the time were sufficient to meet an exigency exception. Thus, it follows that the first step should be examining the facts of this case from the perspective of Officer Klieforth preceding Officer Klieforth's entry into the residence. The following is the chronology of the events:

1. Dispatch received a call regarding a disturbance with a male yelling at a female;
2. Within minutes Officer Klieforth arrived on scene and could hear yelling between a male and female from the sidewalk of the residence;
3. As Officer Klieforth approached the house, Officer Klieforth states that the male sounded like he was in a rage;
4. Officer Klieforth had waited roughly 3 minutes from the time of arrival to the point where the situation escalated;
5. Officer Klieforth could clearly hear the male yelling profanities at the female, with the female exclaiming

“You don’t have to do this” the male responding with “Wrong answer” and then a loud slap;

6. Officer Klieforth was able to observe a male standing over a kneeling female and the female screaming and crying;
7. Officer Klieforth then makes entry into the residence through an unlocked door due to concern for the physical safety of the female.<sup>1</sup>

Given this fact pattern it would be difficult to argue that Officer Klieforth was acting unreasonably. As noted in *Richter*, protecting the safety of individuals is a core responsibility of a police officer.

In *Richter*, the officer had responded to a burglary and was told that the suspect had fled in the direction of the defendant’s home. Upon approaching the home, the officer saw a screen had been removed. Concerned, the officer peered into the home, and roused two individuals. Upon making contact, with the occupants of the home, the officer conducted a search for the burglar. The *Richter* Court found the officer’s actions reasonable for safety reasons, as the officer, at the time, could infer that based on the reported burglary, the suspect fleeing, and apparent forced entry into the defendant’s home, that the occupant of the home could be in danger from an unknown fleeing suspect who may or may not be dangerous.<sup>2</sup>

Unlike in *Richter*, we need not speculate as to any potential threat to safety. Based on the chronology of the events known to the Officer Klieforth at the time, Officer Klieforth heard what he believed to be a physical attack against the female in the residence. While Officer Klieforth did not see the physical attack, based on the totality of the

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<sup>1</sup> (32: 10-13, 15)

<sup>2</sup> *Richter*, ¶ 37-43.

circumstances he believed it was reasonable to make a warrantless entry into the home in order to protect the safety of the female. This is in stark contrast to *Richter*, which involved speculation as to the level of danger the occupants of the home may or may not be facing. Here, there is clear evidence of a physical altercation having occurred within earshot of the responding officer. Officer Klieforth further observed the male party standing over the female party who appeared to be kneeling on the ground and in distress.

Appellant does not argue that there was a slap heard by Officer Klieforth, instead Appellant argues, incorrectly, that the State must prove “...that a delay would gravely endanger life.” (32:25). While this verbiage is utilized in some case law, the State is unable to locate any published opinions which holds the standard for the safety exception is gravely endangering life. To the contrary, while that verbiage is mentioned in *Subdiaz-Osorio* and *Richter*, the actual standard applied by the Courts has been whether there is a threat to physical safety.

Appellant seems to interpret the ‘gravely endangering life’ verbiage, as though the proper standard is that a safety exigency only exists in a situation where an officer sees a gun against someone head and the a finger on the trigger. To hold this high of a standard would be unthinkable and contrary to law enforcement’s primary function, protecting the public. Should law enforcement stand by waiting for a warrant while watching a victim get her teeth knocked out simply because getting hit in the face is unlikely to gravely endanger life? It appears that this type of standard is exactly what Appellant would like the Court to adopt in this case. However, there is no basis in the law to support such a position. Further, nothing in the case law requires the Circuit Court to make a finding the victim’s “life was endangered” (32:25). As mentioned above,



while this verbiage ‘gravely endangered life’ is used, that is not the actual standard applied by the Courts.

The second prong of an exigency analysis is whether there was sufficient time to procure a warrant prior to the warrantless entry into the home. This case is a clear example of a situation in which a the time to procure a warrant would have placed the victim’s safety in jeopardy. At the time Officer Klieforth had heard the slap and subsequent screaming/crying, the loud argument had been in progress for some time. The duration of the argument presumably started before law enforcement was called, dispatch sent Officer Klieforth to the residence which took him “a few minutes” (32:10), and Officer Klieforth was on scene for “about three minutes or so” (32:15) before making entry.

Clearly the disturbance was loud enough that an uninterested party could hear and was concerned enough to called law enforcement and the altercation was escalating to the point that it became physical. It was only after the argument turned physical that Officer Klieforth made the decision to make entry into the residence to protect the safety of the individuals in the home. Had Officer Klieforth waited until a warrant was drafted, reviewed and signed to make entry, we can only speculate as to if this incident would have escalated further. However, it is not reasonable for an officer to wait until someone is “incapacitated”(32:24) before intervening.

### CONCLUSION

Officer Klieforth acted reasonably to protect the safety of the suspect and others when he made a warrantless entry into Appellant’s home. Officer Klieforth arrived to a domestic disturbance which had been ongoing for a substantial amount of time. While Officer Klieforth waited for backup to arrive,

he heard what he believed to be a slap followed by screaming and crying. Given the escalation of the disturbance from verbal to physical, Officer Klieforth made entry into the home to ensure the safety of the individuals in the home.

Further, Officer Klieforth could not have reasonably waited for a warrant before making entry to the residence as there was a present threat to safety, and the time needed to procure a warrant would only further risk the safety of the individuals involved.

### CERTIFICATION AS TO FORM AND LENGTH

I hereby certify that this brief conforms to the rules in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 1568 words.

### CERTIFICATION 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 12<sup>th</sup> day of June, 2020.

Signed:

*Chris Plaunt*

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