

FILED
12-17-2021
CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN
IN SUPREME COURT

No. 2020AP1559-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

LAVERNE WARE, JR.,
Defendant-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

JOSHUA L. KAUL
Attorney General of Wisconsin

KIERAN M. O'DAY
Assistant Attorney General
State Bar #1113772

Attorneys for Plaintiff-
Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-2065
(608) 294-2907 (Fax)
odaykm@doj.state.wi.us

The State opposes Laverne Ware's petition for review. In a case recommended for publication, the court of appeals applied the correct principles of law and standards of review when it affirmed the circuit court's decision and order denying Ware's motion to suppress evidence. *See State v. Ware*, No. 2020AP1559-CR, 2021 WL 5115526 (Wis. Ct. App. November 4, 2021) (Pet-App. 2–16). As Ware rightfully concedes, the petition does not meet the criteria enumerated in Wis. Stat. § (Rule) 809.62(1r). (Pet. 5.) Accordingly, Ware has not shown any “special and important reasons” warranting review by this Court. Wis. Stat. § (Rule) 809.62(1r).

**THIS COURT SHOULD DENY THE PETITION FOR
REVIEW BECAUSE IT DOES NOT SATISFY THE
CRITERIA IN WIS. STAT. § 809.62(1R).**

This Court should decline Ware's petition. Ware was convicted of first-degree intentional homicide, hiding a corpse with intent to conceal a crime, incest, and possession of a firearm by a felon. After being informed of, and seeing, a pool of blood forming under a truck in Ware's garage, police searched the garage. Police found Ware's victim, S.D, dead in the front passenger seat of the truck. Ware moved to suppress all physical and testimonial evidence derived from what Ware alleged was an unlawful search of the garage without a warrant. The circuit court denied Ware's motion to suppress evidence concluding that the search of Ware's garage was justified under the community caretaker exception to the Fourth Amendment's warrant requirement. The court of appeals affirmed on different grounds. During the pendency of Ware's appeal, the United States Supreme Court decided in *Caniglia v. Strom*, 141 S. Ct. 1596, 1600 (2021), that the community caretaker exception is inapplicable to the home. Nevertheless, the State argued, and the court of appeals agreed, that the search was justified under the related, but distinct, emergency aid exception to the Fourth Amendment's warrant requirement.

Ware concedes that his petition does not meet any of the criteria for this Court's review, but he implores this Court to grant his petition to "provide guidance to attorneys statewide on the application of the emergency aid doctrine to residences." (Pet. 5.) However, Ware does not articulate how the court of appeals' opinion fails to provide that guidance, nor does he articulate what guidance he hopes this Court will provide. In reality, Ware's petition does nothing more than relitigate his arguments that the court of appeals correctly rejected. (*Compare* Pet. 17–18 *with* Ware, 2021 WL 5115526, ¶¶ 29–30 (Pet-App. 15–16).)

Here, the court of appeals properly applied Wisconsin and federal precedent that already holds that the emergency aid exception may justify the warrantless search of a home. Ware, 2021 WL 5115526, ¶¶ 20–21 (Pet-App. 10). Moreover, the court of appeals clearly delineated the difference between the community caretaker doctrine and the emergency aid exception. *Id.* ¶ 15 n.5 (Pet-App. 8). Finally, the court of appeals applied well-settled law to the facts presented to it and determined that, under the totality of the circumstances, the emergency aid exception justified the warrantless search of Ware's garage. *Id.* ¶¶ 23–30 (Pet-App. 11–16).

Even absent Ware's concession, because it is already well-established that the emergency aid exception applies to the home,¹ there is no significant question of state or federal constitutional law presented. Wis. Stat. § (Rule) 809.62(1r)(a). Nothing in this case presents a matter of this Court needing to establish, implement, or change a policy within its authority. Wis. Stat. § (Rule) 809.62(1r)(b). The emergency aid exception is not a new doctrine, nor does its application to

¹ See, e.g., *State v. Rome*, 2000 WI App 243, ¶¶ 12, 18, 239 Wis. 2d 491, 620 N.W.2d 225.

the home present a novel legal question or a recurring question of law that necessitates this Court's resolution. Wis. Stat. § (Rule) 809.62(1r)(c). As stated above, the court of appeals properly applied state and federal law regarding the community caretaker and emergency aid exceptions, and its decision therefore does not conflict with state or binding federal law. Wis. Stat. § (Rule) 809.62(1r)(d). Finally, the United States Supreme Court decided *Caniglia* this year and left the emergency aid exception untouched in its decision.² Accordingly, there is nothing for this Court to reexamine due to the passage of time. Wis. Stat. § (Rule) 809.62(1r)(e).

In sum, Ware concedes that his case does not meet any of the criteria for review under Wis. Stat. § (Rule) 809.62(1r), and, even without his concession, Ware's petition lacks a special or important reason for this Court to review the court of appeals' decision. Because the court of appeals' decision properly applies, and therefore does not conflict with, controlling precedent, this Court should deny the petition.

² In fact, as the court of appeals noted, four Justices concurred and *reaffirmed* the emergency aid exception's applicability to the home despite the Court's decision in *Caniglia*. *State v. Ware*, No. 2020AP1559-CR, 2021 WL 5115526, ¶ 14 n.4 (Wis. Ct. App. Nov. 4, 2021) (Pet-App. 7); *see also, e.g., Caniglia v. Strom*, 141 S. Ct. 1596, 1600 (Roberts, C.J., concurring) ("A warrant to enter a home is not required . . . when there is a 'need to assist persons who are seriously injured or threatened with such injury.' . . . Nothing in today's opinion is to the contrary.").

CONCLUSION

This Court should deny Ware's petition for review.

Dated this 17th day of December 2021.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

KIERAN M. O'DAY
Assistant Attorney General
State Bar #1113772

Attorneys for Plaintiff-
Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-2065
(608) 294-2907 (Fax)
odaykm@doj.state.wi.us

FORM AND LENGTH CERTIFICATION

I hereby certify that this response conforms to the rules contained in Wis. Stat. §§ (Rule) 809.19(8)(b) and 809.62(4) (2019-20) for a response to petition for review produced with a proportional serif font. The length of this response is 887 words.

Dated this 17th day of December 2021.

KIERAN M. O'DAY
Assistant Attorney General
State Bar #1113772

**CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (RULE) 809.62(4)(b)**

I hereby certify that:

I have submitted an electronic copy of this response to petition for review, excluding the appendix, if any, which complies with the requirements of Wis. Stat. §§ (Rules) 809.62(4)(b) and 809.19(12) (2019-20).

I further certify that:

This electronic response to petition for review is identical in content and format to the printed form of the response to petition for review filed as of this date.

A copy of this certificate has been served with the paper copies of this response to petition for review filed with the court and served on all opposing parties.

Dated this 17th day of December 2021.

KIERAN M. O'DAY
Assistant Attorney General
State Bar #1113772