STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

STATE OF WISCONSIN,

Plaintiff-Respondent,

Circuit Court Case No. 2019CF000121

-vs-

BROOKE K EDER,

Appeal Case No. 2021AP000485

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN THE CIRCUIT COURT FOR BARRON COUNTY, BRANCH II, THE HONORABLE JAMES C. BABLER, PRESIDING

BRIEF PLAINTIFF-RESPONDENT

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STATEMENT OF THE ISSUES

There were two search warrants at issue in this case.

The first search warrant was obtained on April 24, 2019. This warrant was to search Brooke Eder's apartment for a person she was believed to be in a relationship with. That person was Joshua Estes. This warrant was executed by the Barron County Sheriff's Department on April 25, 2019 and Mr. Estes was subsequently arrested on an outstanding arrest warrant.

Following Mr. Estes' arrest, Barron County Detective Mike Carroll was directed to the basement area of the apartment building Ms. Eder lived in by various

citizens who were watching the execution of the search warrant. After Detective Carroll entered the basement, he located the suspected methamphetamine and drug paraphernalia and also learned through another tenant who lived in the building, that Mr. Estes had used the basement.

Based on this information, a second search warrant for drugs was obtained for Ms. Eder's apartment on April 25, 2019. Methamphetamine was found in Ms. Eder's bedroom when that search warrant was executed on the same day.

Ms. Eder filed an initial suppression motion challenging the probable cause on the initial April 24 warrant. After that motion was denied, she filed a second suppression motion challenging the entry into the basement area of the apartment building by Detective Carroll. The Court denied this motion on the grounds that she lacked standing to challenge his entry into the basement.

1. Was the April 24 warrant defective for lack of probable cause?

   The Circuit Court held that the affidavit for the search warrant contained sufficient probable cause.

2. Was there a nexus between the execution of the April 24 warrant and the entry of the basement, that led to the second search warrant for Ms. Eder's apartment, in order to warrant exclusion of the drugs found in her bedroom?

   This issue was never directly argued to the Court by Ms. Eder or ruled on by the Court.

3. Did Ms. Eder have standing to challenge the entry into the basement by Detective Carroll after the execution of the first search warrant?

   The Circuit Court held that Ms. Eder lacked standing to challenge the entry into the basement by Detective Carroll.

STATEMENT ON ORAL ARGUMENT

The State will NOT REQUEST oral argument, as this appeal presents issues that can be addressed by the application of long-standing legal principles, which can be fully addressed by written briefs.

STATEMENT OF FACTS

On April 24, 2019, Barron County Detective Michael Carroll applied for a search warrant for Apartment #1 of a three story apartment complex, located in the Village of Brill, Wisconsin. The apartment complex contained an additional apartment that was located on the lower level of the complex. The purpose of the search warrant was to locate an individual named Joshua Estes. The search warrant was granted by the Honorable Maureen Boyle, Circuit Court Judge for Barron County. (R-18; 1-7; App. 101-107, hereinafter referred to as the April 24 warrant)

Detective Carroll executed the April 24 warrant on April 25, 2019 at which point Joshua Estes was arrested. After Mr. Estes was arrested, Detective Carroll's attention was directed to the basement area of the apartment complex by multiple citizens who were watching the execution of the April 24 warrant. Based on the citizens motioning for officers to check the basement, Detective Carroll entered the basement area and subsequently located a large bag of a crystalline substance he suspected to be methamphetamine, as well as digital scales and other smoking devices. He also learned through another Barron County Deputy who interviewed another tenant of the building named John Johnson, that Joshua Estes used the basement and had items in it. Based on this information, Detective Carroll applied for a second search warrant for Apartment #1 to search it for methamphetamine. This warrant was applied for on April 25, 2019 and granted that same day by the Honorable Maureen Boyle. (R-19; 1-8; App. 108-115, ¶¶16 and 17 of the affidavit of Detective Carroll, hereinafter referred to as the April 25 warrant) The April 25

R- refers to the record item number as set forth in the Index filed by the Barron County Clerk of Court on 4/8/2021.

warrant was executed which resulted in methamphetamine being found in Apartment #1 that led to Ms. Eder being charged with possession of methamphetamine; and Mr. Estes being charged with possession of methamphetamine with intent to deliver, as well as possession of drug paraphernalia. (R-3)

Ms. Eder and Mr. Estes both filed virtually identical motions to suppress relative to both the April 24 and the April 25 warrants. The initial motion to suppress filed by Ms. Eder challenged the sufficiency of the probable cause for both search warrants. (R-17) A suppression hearing on this initial motion was held on November 11, 2019, before the Honorable James Babler, Circuit Court Judge for Barron County. After reviewing the affidavits for both search warrants and hearing arguments of counsel, the Court issued a written decision on December 9, 2019, denying both defendants' motions to suppress, challenging the probable cause for both the April 24 and April 25 warrants. (R-26)

On January 14, 2020, Ms. Eder filed a second motion to suppress, challenging the entry into the basement area by Detective Carroll, after Mr. Estes had been arrested during the execution of the April 24 warrant. In a letter to the Court dated, January 22, 2020, the State set forth the factual relationship between the April 24 and April 25 warrants, and also raised the issue of whether Ms. Eder and Mr. Estes had standing to challenge the entry into the basement on April 25, 2019, by Detective Carroll. (R-30) A joint evidentiary hearing was held on July 10, 2020, regarding the second suppression motion filed by Ms. Eder and Mr. Estes, to address the standing issue raised by the State.

At the hearing that was held on July 10, 2020, both defendants offered testimony concerning what portion of the building, located at 2759 23 ½ Street, that they rented in Barron County. The State presented testimony from the landlord, Tom Smrekar, and another tenant who rented the ground floor, John Johnson. The testimony clearly indicated that the building consists of an upper apartment unit that

the defendants rented. It also consisted of a ground floor apartment that Mr. Johnson rented. It is apparent from the photographs introduced as evidence in the testimony, that this is a building that had been converted to separate living quarters. (R-59; 32-35; App. 184-187) There is also a basement and back garage area which is part of the building, that was accessible through a portion of the building Mr. Johnson rented, as well as through a secondary outside door. The basement area is not accessible through the portion of the building the defendants rented. Their only means of access to it was from an outside door.

Mr. Estes testified that when the defendants entered into the lease with Mr. Smrekar, they discussed renting the basement area of the building. (R-59; 16, 24; App. 168, 176) Both defendants testified that Mr. Estes put a new lock on the basement door and they had to use keys to access the basement. (R-59; 12, 28; App. 164, 180) Mr. Estes testified he bought a $10 doorknob that came with two keys and that he gave one to Mr. Johnson and he kept one. (R-59; 12; App. 164) He also testified that Mr. Johnson agreed that a new door lock should be put on the basement door. (R-59; 12; App. 164) Mr. Estes also offered testimony that it was John Johnson's idea that he and Ms. Eder use the basement for storage. (R-59; 11; App. 163) He further testified that Mr. Johnson had people going in and out of the basement and both he and Ms. Eder testified that Mr. Johnson would be down in the basement with them from time to time, specifically drinking beer. (R-59; 11, 23; App. 163, 175) Mr. Estes also acknowledged that he represented to Mr. Johnson that the landlord, Tom Smrekar, gave Mr. Estes and Ms. Eder permission to use the basement. (R-59; 16; App. 168) Mr. Estes further testified that John Johnson would have people going down to the basement snooping around and that he had people in and out of the basement. (R-59; 14; App. 166)

Tom Smrekar testified that the defendants rented only the upstairs apartment of the rental property, which consisted of only two rental units. He further testified that John Johnson rented the lower unit, and had been a tenant for seven years. The

rental of the upstairs apartment did not include the basement area as that was included as part of the lower unit. (R-59; 31, 34; App. 183, 186) He further testified that any use of it by the upstairs tenant, he left to the discretion of Mr. Johnson. (R-59; 34; App. 186) He further testified that he did not recall ever giving the defendants permission to go ahead and use the basement or renting the basement as part of their lease. (R-59; 37; App. 189) He further testified that he had no knowledge of a lock being placed on the basement door. (R-59; 41; App. 193)

John Johnson testified that he had rented the lower unit from Mr. Smrekar and that his lease included the basement, which contained his utilities, both water and electricity. (R-59; 45, 47; App. 197, 199) He further testified that he had access to the basement as well as another garage area through his apartment and that access can also be gained from a secondary outside door. (R-59; 46; App. 198) He further indicated that he never really used the outside door and was never provided the key to the outside basement door by Mr. Estes. (R-59; 48, 53; App. 200, 205) He further testified Mr. Estes approached him about fixing up the basement to store things, and that he had warned Mr. Estes that the basement was damp. He also testified that Mr. Estes asked him about using the basement and that he indicated that as long as Mr. Smrekar didn't care, he didn't care. (R-59; 48-49; App. 200-201) He also testified that he recalled Mr. Estes telling him that Mr. Smrekar had given Mr. Estes permission to use the basement. (R-59; 50; App. 202)

At the conclusion of the hearing on July 10, 2020, the parties submitted written briefs and the Court held a hearing on September 9, 2020. An oral ruling was then issued, denying both defendant's second suppression motions.

The Court made several findings of fact, relative to the basement area of the building. The Court found that John Johnson rented the main floor apartment and his lease included the basement. The basement was part of his apartment and he had the right to exclude others. (R-60; 9, 12; App. 219, 222) The Court also found that the basement could be accessed at any time through Johnson's apartment as

well as through an outside door that Mr. Estes put a lock on, and gave a key to Johnson. (R-60; 9, 13; App. 219, 223) The Court found that the landlord and Mr. Johnson allowed Mr. Estes and Ms. Eder to use the basement, even though the landlord did not know Mr. Estes was in fact using the basement. Mr. Estes and Ms. Eder were merely allowed to use the basement with the permission of Mr. Johnson. It was not a regular common area of an apartment building. (R-60; 12-13; App. 222-223) It was just part of an apartment lease that Mr. Johnson allowed someone else to use. (R-60; 13; App. 223)

In rendering it's decision, the Court cited to State v. Trecroci, 246 Wis. 2d 261, 630 N.W.2d 555 (Wis. Ct. App. 2001) and State v. Eskridge, 256 Wis.2d 314, 647 N.W.2d 434 (Wis. Ct. App. 2002), and applied a two-prong test to determine standing. Based on the findings of fact it made, the Court found that Ms. Eder and Mr. Estes had a subjective expectation of privacy in the basement due to the fact that they used it regularly, and Mr. Johnson knew they did, combined with the lock Mr. Estes put on the door. (R-60; 10-11; App. 220-221)

The Court then conducted an analysis of the six factors from Trecroci and Eskridge relative to the second prong, and held that Ms. Eder failed to satisfy all six factors since she and Mr. Estes did not have complete dominion and control over the basement. The only person who had that right was Mr. Johnson since the basement was part of his apartment and lease. (R-60; 10-13; App. 220-223) The Court further held that Mr. Johnson was the only one who had the right to exclude others. The Court also held that the basement was not part of a common area of the overall apartment building, it was part of Mr. Johnson's apartment that he allowed them to use. (R-60; 13; App. 223)

Finally, the Court held that Mr. Estes and Ms. Eder's claim of privacy was not consistent with historical notions of privacy since Mr. Johnson could access the basement at any time, and allow anyone else to do so, both of which Mr. Estes and Ms. Eder knew. (R-60; 13; App. 223)

After the denial of her motion to suppress, Ms. Eder entered a guilty plea to an amended misdemeanor charge of possession of amphetamine and was placed on probation. (R-39-40)

ARGUMENT

I. The April 24 warrant affidavit did contain probable cause to support the issuance of a search warrant for Ms. Eder's apartment to look for Joshua Estes.

The Fourth Amendment of the United States Constitution and § 11 of the Wisconsin Constitution both recite that, "No warrant shall issue but upon probable cause, supported by oath or affirmation, and that particularly describing the place to be search, and the persons or things to be seized."

Generally, when reviewing motions to suppress, a two-prong analysis is utilized. First, the Court reviews the Circuit Court's findings of fact, and will uphold them unless they are clearly erroneous. Second, the Court reviews the application of constitutional principles to those facts under a de novo standard. State v. Felix, 339 Wis.2d 670, 811 N.W.2d 775 (Wis. 2012)

The appellate review of an affidavit's sufficiency to support the issuance of a search warrant is limited. State v. Reed, 156 Wis.2d 546, 457 N.W.2d 494 (Wis. Ct. App. 1990). An appellate court is to pay great deference to the determination made by the issuing entity. In doubtful or marginal cases, the determination should be governed by preference to be accorded to warrants. State v. Ehnert, 466 Wis.2d 237, 160 N.W.2d 464 (Wis. Ct. App. 1991) citing Illinois v. Gates, 462 U.S. 213 (1983)

Probable cause is a fluid concept, turning on the assessment of probabilities in a particular factual context. Id. at 232. Whether probable cause exists must be

determined by examining the totality of the circumstances. Id. at 230. The probable cause standard is a practical, nontechnical one invoking the practical considerations of everyday life on which the reasonable and prudent me, not legal technicians, act. Id. at 231. State v. Ehnert, 160 Wis. 2d 464, 469, 466 N.W.2d 237, 238 (1991)

Detective Carroll's affidavit for the April 24 warrant contained four paragraphs outlining the basis for the belief that Joshua Estes would be located at Brooke Eder's apartment located at 2759 23rd ½ street located in Brill, Wisconsin. ¶12 sets forth the observation Detective Carroll made on April 19, 2019, while conducting surveillance on the above residence. Detective Carroll specifically observed Mr. Estes outside the above residence because he recognized him. Detective Carroll also indicated in ¶12 that he observed Brooke Eder's vehicles parked at the residence. In ¶13 of his affidavit, Detective Carroll set forth information that he learned through the Barron County RMS system that Joshua Estes had an address listed on 2759 23rd ½ street. The State agreed that ¶14 could be disregarded by the Circuit Court in its analysis. In ¶15 of his affidavit, Detective Carroll confirmed on April 24, 2019 that Brooke Eder received mail at Apartment #1 at the above address. That confirmation came from a United States Postal Inspector. In ¶15, Detective Carroll also confirmed with the Barron County Health and Human Services Department that Ms. Eder lived in the upstairs apartment and that Joshua Estes was not to be on the property due to a child protective service agreement. (R-18) These are the facts that were presented to the Honorable Maureen Boyle on April 24, 2019.

As the Trial Court noted in its decision, there was a reasonable inference that Ms. Eder and Mr. Estes were in an ongoing relationship. There was also a reasonable inference that if Mr. Estes was there on April 19, 2019, it is probable he might be there on April 24, 2019. When an activity is protracted in a continuous nature, the passage of time diminishes in significance. United States v. Johnson, 461 F.2d 285 (10th Cir. 1972) The facts set forth in Detective Carroll's affidavit

support a reasonable inference and conclusion that Ms. Eder and Mr. Estes would likely continue their relationship and have contact with one another at her apartment. That was not an unreasonable conclusion for the Court to draw when it granted the April 24 warrant. The Trial Court's conclusion that there was a reasonable inference that this relationship was ongoing, was further bolstered by the information regarding the no contact provision imposed by the Department of Health and Human Services. When a relationship is ongoing, the probability of contact between Mr. Estes and Ms. Eder at her apartment would be higher than if they were not in a relationship. In the context of the facts in this case, there was a high likelihood these two individuals had an ongoing relationship and therefore a likelihood that Mr. Estes would be at her apartment on April 24, 2019. The affidavit did not have to set forth with specificity that Mr. Estes actually lived at the residence on April 24, 2019. It only had to set forth a reasonable probability that he might be at the residence given his relationship with Ms. Eder.

Search warrants under both the Fourth Amendment and the counterpart under the Wisconsin Constitution, clearly allow for a search warrant to be used to seize a person. The defense reliance on State v. Blanco, 237 Wis.2d 395, 614 N.W.2d 512 (Wis. Ct. App. 200), is misplaced since these issues in this case do not involve the entry into a residence to execute an arrest warrant. The affidavit for the search warrant to look for Mr. Estes in Ms. Eder's apartment did not require Detective Carroll to set forth facts that Joshua Estes actually would be in the apartment on April 24, 2019.

The affidavit of Detective Carroll, relative to the April 24 warrant, contained probable cause to support the issuance of the search warrant for Ms. Eder's apartment to look for Mr. Estes. The Trial Court properly denied the motion to suppress on the grounds of insufficiency of probable cause in the affidavit for the April 24 warrant.

The State would point out that the second search warrant that Detective Carroll applied for, which was the April 25 warrant, was not based on anything found during the execution of the April 24 warrant. It is clear from the affidavit of Detective Carroll, relative to the April 25 warrant, that the only thing found during the execution of the April 24 warrant was Joshua Estes. (R-19; 1-8; App. 108-115) ¶¶16 and 17 of Detective Carroll's affidavit, clearly indicate that the basis for the April 25 warrant to search for methamphetamine in Ms. Eder's apartment, came as a result of him going into the basement of the apartment building and finding what he suspected to be methamphetamine. He went into the basement of the apartment building as a result of citizens watching the execution of the search warrant, who directed him to the basement. He did not go into the basement as part of the execution of the April 24 warrant for Mr. Estes. The drugs that formed the basis for Ms. Eder's conviction in this case were located in her bedroom after the execution of the April 25 warrant. That was the whole point of the April 25 warrant. The execution of the April 24 warrant for Mr. Estes did not result in the officers finding drugs in her bedroom during the course of the execution of that search warrant.

Consequently, even if this court was to determine that the April 24 affidavit lacked probable cause, it does not follow that the search of Ms. Eder's apartment by way of the April 25 warrant is tainted and requires suppression of the drugs found under the fruit of the poisonous tree doctrine set forth under Wong Sun v. United States, 371 U.S. 471 (1963). As recognized in Wong Sun, the critical question is, "Whether, granting establishment of the primary illegality, the evidence which instant objection is made has been come at by exploitation of that illegality or instead by some means sufficiently distinguishable to be purged of the primary taint." State v. Nehls, 111 Wis.2d 594, 331 N.W.2d 603 (Wis. Ct. App. 1983) citing Wong Sun at 488

The defense argument that the execution of the April 24 warrant directly resulted in the drugs being found in Ms. Eder's bedroom when the April 25 warrant

was executed, ignores the fact that the April 25 warrant was based on information that came to Detective Carroll, independent of the execution of the April 24 warrant looking for Mr. Estes. The drugs that are the basis for Ms. Eder's conviction were not found in her bedroom during the execution of the April 24 warrant. The impetus for the subsequent search of her bedroom by way of the April 25 warrant came about as a result of information from the citizens watching the execution of the April 24 warrant, as well as the information learned from the other tenant in the building, Mr. Johnson, that Joshua Estes used the basement.

The Trial Court never directly addressed this issue. It denied Ms. Eder's motion regarding the April 25 warrant on the grounds that she lacked standing to challenge the entry into the basement. It also denied her motion that the April 25 warrant lacked probable cause. The Circuit Court's ruling on the probable cause issue relative to the April 25 warrant was not in error given Detective Carroll's affidavit.

II. Ms. Eder lacked standing to challenge the entry and search of the basement by Detective Carroll after the execution of the April 24 warrant and prior to the obtainment, and execution, of the April 25 warrant.

When assessing a defendant's standing to challenge a search under the Fourth Amendment, the critical inquiry is, "whether the person… has a legitimate expectation of privacy in the invaded place." State v. Trecroci, 246 Wis.2d 261, 630 N.W.2d 555 (Wis. Ct. App. 2001) Whether a search is reasonable under the Fourth Amendment is a question of law that is reviewed de novo. Whether a defendant has standing to raise a Fourth Amendment claim also presents a question of law. Trecroci, ¶23.

A defendant bears the burden of establishing his or her reasonable expectation of privacy by a preponderance of the evidence. State v. Whitrock, 161 Wis.2d 960, 468 N.W.2d 696 (Wis. 1991)

Whether a person has a reasonable expectation of privacy depends on a two-pronged test as to (1), whether the individual has exhibited an actual, subjective expectation of privacy in the area inspected and in the items seized; and (2), whether society is willing to recognize such an expectation of privacy as reasonable. State v. Eskridge 256 Wis.2d 314, 647 N.W.2d 434 (Wis. Ct. App. 2002) and State v. Trecroci 246 Wis.2d 261, 630 N.W.2d 555 (Wis. Ct. App. 2001) The defendants bear the burden of establishing their reasonable expectation of privacy by a preponderance of the evidence. The second prong of the above test is an objective test. On this element of the test, the Court is to look to the following factors:

1. Whether the person had a property interest in the premises;
2. Whether the person was legitimately on the premises;
3. Whether the person had complete dominion and control and the right to exclude others;
4. Whether the person took precautions customarily taken by those seeking privacy;
5. When the person put the property to some private use; and
6. Whether the claim of privacy is consistent with historical notions of privacy.

If the defendants satisfy all six factors they prevail on the second prong of the Trecroci test. Eskridge, 214 Wis.2d, ¶16.

These factors are the same factors noted in State v. Dixon, 177 Wis.2d 961, 501 N.W.2d 442 (Wis. 1993) which involved an issue of standing regarding property found in a vehicle. In State v. Bruski, 299 Wis.2d 177, 727 N.W.2d 503

(Wis. 2007) which also involved a vehicle, the Court held that this list of factors from Dixon was neither controlling nor exclusive. Under Bruski, it appears that the Court should consider the totality of the circumstances when evaluating the second prong of the Dixon factors. Neither Trecroci or Eskridge was cited by the Court in Bruski. Both Trecruci and Eskridge dealt with searches concerning dwellings. In Eskridge, the defendant only satisfied 3 of the 6 factors. In Trecroci, the defendant met all 6 of the factors.

It is clear from the testimony in this case that this was essentially a two unit apartment building. Ms. Eder and Mr. Estes had the upper unit and Mr. Johnson had the unit on the main level and also had the basement as part of his lease. The basement was attached to his apartment and also had an outside door to access it. It was not part of the apartment Ms. Eder and Mr. Estes rented. At best, they shared the basement with Mr. Johnson, who clearly had unfettered access to the basement at any time. His utilities were also located in the basement.

In applying the six factors from Trecroci, the only extent of a property interest Ms. Eder had in the basement, was the fact that Mr. Johnson let her and Mr. Estes use the basement. It was not part of their lease, nor could it even be accessed from their apartment. It is clear that Mr. Johnson could have excluded them from using the basement at any time if he chose to do so since it was not part of their lease that they could enforce in any manner. Ms. Eder and Mr. Estes also did not have the right to exclude Mr. Johnson from the basement. The State would submit that the Circuit Court's finding on this factor was in error.

The State would concede that Ms. Eder and Mr. Estes had permission to use the basement which supports the Circuit Court's finding that Ms. Eder met the second Trecroci factor.

It is also clear that the defendants did not have complete dominion and control in the right to exclude others from the basement. Mr. Estes's own testimony

undercuts this. (R-59; 14; App. 166) The basement was clearly accessible through Mr. Johnson's apartment as his utilities were located in the basement, and his lease included the use of the basement, if he chose to use it. At no point did the defendants exclude him from using the basement, nor did they have complete dominion and control over the basement, notwithstanding their testimony placing a lock on the outside basement door. There was also no evidence presented by them that they prevented Mr. Johnson from using the basement.

In fact, Mr. Estes testified that Mr. Johnson had people in and out of the basement, and people from the public were in and out of the basement all the time. (R-59; 14; App. 166) That testimony hardly comports with Mr. Estes and Ms. Eder having complete dominion and control over the basement or that they took precautions customarily taken by those seeking privacy. The Circuit Court's finding on this factor was not clearly erroneous.

The State would concede that putting a lock on the outside door would constitute taking precautions customarily taken by those seeking privacy, and the Court's finding on this point is not clearly erroneous. However, Mr. Estes and Ms. Eder provided a key to Mr. Johnson to give him access to the basement.

Finally, as the Court in Eskridge noted, historical notions of privacy do not seem to encompass "common areas" in apartment buildings. This case is similar to Eskridge in that it involves a basement area that arguably was a common area to both tenants. Common areas in apartment buildings are by their very definition not private, but shared areas that are accessible to and used by other tenants. In this case, the basement was a shared area by the standpoint that Mr. Johnson had access to it from his unit, his utilities were located in the basement and he had every right to access it.

The Fourth Amendment accords the highest degree of protection to a person's home. Trecroci ¶41 Unlike the defendant in Trecroci, who used the

stairway that was at issue to get to his living quarters, Ms. Eder's use of the basement had no connection to her living quarters.

Given all of the circumstances, society would not recognize Ms. Eder's expectation of privacy as reasonable given the fact that Mr. Johnson had unfettered access to the basement and could have given consent to law enforcement to enter the basement at any time.

If this court construes Eskridge to mean that Ms. Eder had to meet all six of the Trecroci factors, the Circuit Court correctly determined that she failed to do so.

If this court applies a totality of the circumstances test under Bruski, the Circuit Court still correctly determined that Ms. Eder failed to meet her burden of proof on the second prong of the Trecroci test.

The basement was a common shared area, accessible to and used by the other tenant in the building given that his utilities were in the basement.

CONCLUSION

For the reasons stated above, the State submits that this court should affirm of the Circuit Court's ruling that the April 24 warrant was supported by probable cause. The State also submits that this court should not address the suppression of any evidence seized by way of the April 25 warrant.

Finally, the State submits that this court should affirm the Circuit Court's ruling that Ms. Eder failed to meet her burden of proof that she had standing to challenge the entry into the basement by Detective Carroll. This court should consequently affirm the Circuit Court's denial of Ms. Eder's second suppression motion.

For the foregoing reasons, the State respectfully requests that this Court affirmed the Trial Court's decision regarding the post-conviction motion.

Dated at Barron, Wisconsin, this 3rd day of January 2022.

RESPECTFULLY SUBMITTED,

Electronically signed by:

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in §809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 3,335 words.

Dated this 3rd day of January, 2022.

Electronically signed by:

John M. O'Boyle

Assistant District Attorney

CERTIFICATE OF COMPLIANCE WITH RULE 809.19

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 3rd day of January, 2022.

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