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COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Case No. 2022AP001802 CR

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

NOAH D. HARTWIG,

Defendant-Respondent.

ON APPEAL FROM AN ORDER OF THE TRIAL COURT SUPPRESSING
EVIDENCE, IN THE CIRCUIT COURT FOR JEFFERSON COUNTY,
BRANCH III, THE HON. ROBERT F. DEHRING, JR., PRESIDING

REPLY BRIEF OF PLAINTIFF-APPELLANT

Respectfully submitted,

MONICA J. HALL
District Attorney
State Bar #1049039
Attorney for Plaintiff-Appellant

District Attorney's Office
Jefferson County, Wisconsin
320 South Center Avenue, Room 225
Jefferson, Wisconsin 53549
(920)-674-7220

I. THE COMMUNITY CARETAKER EXCEPTION JUSTIFIED THE INITIAL SEIZURE. REASONABLE SUSPICION PROVIDED JUSTIFICATION TO EXTEND IT.

Initial Seizure – Community Caretaker

Mr. Hartwig dismisses everything Deputy Heggie observed prior to Mr. Hartwig's arrival at the scene as "nonsense". He states that she provided no articulable reason why her observations caused her concern. The State asserts that Deputy Heggie's testimony that she found a lone vehicle in a remote area on cold winter night and observed that a purse had been left inside would be a reason to have concern for the occupant. However, we do not need to infer why Deputy Heggie was concerned because Deputy Heggie articulated why she was concerned: she was worried the individual who had occupied the vehicle may need help or was suicidal.

Further, Ms. Wagner's arrival at the parking lot did not alleviate that concern. When she arrived, Ms. Wagner exited Mr. Hartwig's vehicle and quickly got into her vehicle. Because she found this suspicious, Deputy Heggie activated her emergency lights and made contact with Ms. Wagner.

Mr. Hartwig asserts that Deputy Heggie's testimony that this behavior was suspicious means her contact with Ms. Wagner was due to suspicion of criminal behavior and not because she was performing her role as a community caretaker. The State contends that law enforcement can find behavior to be suspicious without believing there is criminal activity afoot. The State further contends that said suspicious behavior can be relevant to the community caretaker analysis in

that this behavior might lead law enforcement to believe that an individual is in danger. And that is what was articulated here by Deputy Heggie.

The State will acknowledge that Deputy Heggie testified that when she activated her lights, she was conducting an investigatory stop. (R. 18:27, Pet-App.:35) However, later at the hearing, the following exchange occurred:

Q. Did you suspect that there was some kind of drug deal that happened right in front of you there?

A. At that point – I guess, when are you asking?

Q. At any point.

A. Initially, I was there trying to locate Savannah, because her vehicle was left behind with a purse in the front seat.

Q. So you were suspecting a drug deal then?

A. Not at that time. When I smelled the odor of marijuana, there was suspicion as to what was going on. (R. 18:40, Pet-App.:48)

This exchange made clear that Deputy Heggie did not suspect criminal activity until she smelled the marijuana. Prior to that, her contact with Ms. Wagner was due to her concerns for Ms. Wagner's safety. To expect Deputy Heggie to just go on about her shift as if nothing occurred sends the message that law enforcement should ignore whether citizens are in unsafe situations and instead focus exclusively on investigating crimes. The State believes Deputy Heggie acted out of genuine concern for Ms. Wagner, and the community caretaker exception justified this seizure.

Extension of The Stop – Reasonable Suspicion

The contact with Mr. Hartwig as well as the extension of the stop was justified by reasonable suspicion a crime had been committed. In his brief, Mr. Hartwig conveniently left out the fact that Deputy Heggie smelled marijuana upon

making contact with Ms. Wagner's vehicle. He further ignores that that Ms. Wagner had just gotten out of Mr. Hartwig's vehicle. Perhaps Mr. Hartwig believes this is one of those "superfluous assertions of fact" that have no relevance to the totality of the circumstances analysis. It is at the point she smelled the marijuana that Deputy Heggie had reasonable suspicion to believe a crime had been committed.

It is that reasonable suspicion, not the community caretaker exception that allowed Deputy Heggie to extend the stop and make contact with Mr. Hartwig. While the odor of marijuana in Ms. Wagner's vehicle did not provide probable cause to arrest Mr. Hartwig, it did provide reasonable suspicion to believe Mr. Hartwig possessed marijuana, especially considering Ms. Wagner had just left his vehicle. Further, the fact that Mr. Hartwig was smoking a cigarette when Deputy Heggie made contact with him just reinforced that suspicion considering this is a tactic often used by individuals to cover the odor of controlled substances. Given these factors, the State believes that the extension of the stop to make contact with Mr. Hartwig was justified by reasonable suspicion to believe he was involved in drug activity.

II. MR. HARTWIG'S DISCUSSION OF *CANIGLIA V. STROM* IS A RED HERRING, AS *CANIGLIA* IS INAPPLICABLE TO THIS CASE.

In *Caniglia v Strom*, 141 S.Ct. 1596, 1598, 593 U.S. ____ (2021), officers entered a home and seized an individual and his firearms after his wife reported that he was suicidal. Caniglia sued claiming that law enforcement violated the 4th

Amendment when they entered his home and seized his firearms. *Id.* The District Court ruled in favor of law enforcement, and the First Circuit affirmed finding that that the decision to remove Caniglia and his firearms from the residence fell within the community caretaking exception to the warrant requirement. *Id.* at 1598. The Supreme Court granted certiorari and held that a warrantless search of a home cannot be justified by the community caretaker exception. *Id.* at 1597, 600.

The *Caniglia* court was silent on the lawfulness of the exception's application to vehicle search and seizures. In fact, the Court expressly distinguished homes from vehicles. The *Caniglia* court stated, "What is reasonable for vehicles is different from what is reasonable for homes." *Id.* at 1600. The Court further noted that there was a "constitutional difference" between vehicles and homes. *Id.* at 1599. Because the Court did not address the use of the community caretaker exception to justify warrantless searches and seizures of vehicles, the case is inapplicable to this matter.

CONCLUSION

For the reasons stated in this Reply Brief as well as the State's original Brief, the State requests that the order of the trial court suppressing evidence be reversed, and that this action be remanded to that court for further proceedings consistent with the order of this Court.

Dated this 21st day of February, 2023 at Jefferson, Wisconsin.

Respectfully submitted,

Electronically signed by,

Monica J. Hall

MONICA J. HALL

District Attorney

State Bar #1049039

Attorney for Plaintiff-Appellant

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in §809.50(1), Wis. Stats. for a brief produced with a proportional serif font. The length of this brief is five pages with 1,001 words.

In addition, I hereby certify that an electronic copy of this brief has been submitted pursuant to §809.19(12), Wis. Stats. and that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief.

Dated this 21st day of February, 2023 at Jefferson, Wisconsin.

Electronically signed by,

Monica J. Hall

MONICA J. HALL
District Attorney
State Bar #1049039
Attorney for Plaintiff-Appellant