STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Case No. 2023AP000086 - CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ROGER JAMES GOLLON,

Defendant-Appellant,

ON APPEAL FROM AN ORDER DATED JUNE 13, 2022,
DENYING THE DEFENDANT'S MOTION TO SUPRESS, AND A
JUDGMENT DATED JANUARY 6, 2023, OF THE CIRCUIT COURT
FOR PORTAGE COUNTY, BRANCH 1,
THE HONORABLE THOMAS B. EAGON, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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STATEMENT ON ORAL ARGUMENT

The Plaintiff-Respondent, State of Wisconsin, does not request oral argument because it would not assist the court in resolving the issues raised in this case.

STATEMENT ON PUBLICATION

The Plaintiff-Respondent, State of Wisconsin, does not request publication.

STATEMENT OF FACTS

Officer Beach is a police officer for the City of Stevens Point and, at the time of his testimony on October 1, 2021, had worked as a Stevens Point police officer for just over 4 ½ years. R.41:6. On March 26, of 2021, Ofc. Beach was working as a law enforcement officer when he responded to a motor vehicle crash/incident at about 1:45 a.m. R.41:7. Ofc. Beach observed that the vehicle possibly hit a pipe or gas line, and the front bumper along with the license plate were left at the scene, but the vehicle was gone so, in his words, it was a "pretty decent crash." R.41:10.

After responding to the crash scene, Ofc. Beach went to the house of the owner of the vehicle involved in the crash (the defendant), which was a couple houses to the south of the crash scene. R.41:7-8. Ofc. Beach knew at the time he responded to the residence that the registered owner of the vehicle, based on the license plate number left at the scene, was the defendant, Dr. Roger Gollon. R.41:8.

Ofc. Beach was first to arrive at Dr. Gollon's residence, along with Deputy Selvey. R.41:9. Ofc. Beach explained that the reason he abruptly left the crash scene to go to the owner's house to check on the driver's welfare and further investigate the crash because at that point he did know if any occupants were injured or if the driver had any medical issues that caused the crash. R.41:13, 23. Upon arriving at the residence of Dr. Gollon, Ofc. Beach knocked on the front door and rang the doorbell. At first, nobody came to the door but there was a light on in the kitchen towards the back of the home. After initially knocking, Ofc. Beach observed feet with black socks sticking out into the hallway from the kitchen,

appearing as if someone was lying on the floor. Ofc. Beach made these observations through the window in the front door of the defendant's residence. R.41:8. Ofc. Beach did not look into any other windows at the defendant's residence. R.41:20.

Ofc. Beach continued to knock on the front door and ring the doorbell trying to get the person lying on the floor to wake up or respond. At this point, Sgt. Long of the Stevens Point Police Department had also arrived at the defendant's residence. As Ofc. Beach continued knocking on the door and ringing the doorbell, Sgt. Long walked to the window on the garage to determine if a vehicle matching the description of the vehicle involved in the crash was inside the garage. R.41:10.

The person lying on the floor appeared to be on his or her back, and the feet did not move at first. R.41:19. The person lying on the floor, later identified as the defendant, eventually got up and answered the door. Ofc. Beach then identified him and discussed the crash. R.41:12. Ofc. Beach estimated that he knocked on the door and rang the doorbell for about five minutes prior to the defendant responding. R.41:14. Ofc. Beach then asked the defendant if he and the other officers could look into the garage, and the defendant agreed to take them into the garage to look at the vehicle. R.41:13.

Sgt. Long also testified that he was a patrol sergeant for the City of Stevens Point for about 7 ½ years at the time he testified at the suppression hearing, and was working as a law enforcement officer on March 26, 2021 at about 1:45 a.m. R.41:24. He arrived at the scene of the crash and observed that a vehicle appeared to have struck a tree and gas line. R.41:24-25. The tree and gas line appeared to be at least 10-15 feet off the roadway. Sgt. Long described it as a "decent crash" because the vehicle also left a portion of its body work behind, so there was a "possibility of a personal injury kind of thing." R.41:26. The fire department was also notified of the crash. R.41:25.

Sgt. Long testified that when he left the crash scene, he was concerned for the well-being of the driver and/or any passengers in the vehicle because it is part of his duty as a law enforcement officer to follow up to find out if anyone was injured. R.41:39. When Sgt. Long arrived at the defendant's residence, Ofc. Beach was already knocking on the door and

ringing the doorbell. Sgt. Long talked to Ofc. Beach briefly, and then checked the garage to see if the vehicle from the crash was inside it because law enforcement concerned about whether anyone was injured from the crash. R.41:27. He did not know if anyone was injured or if anyone had a medical condition, but Ofc. Beach did tell him about seeing feet on the kitchen floor before Sgt. Long looked through the garage window. R.41:32.

By looking into the garage window, Sgt. Long observed a vehicle matching the color of the bumper that was left behind at the crash site and informed the other officers of his observation. Ofc. Beach continued knocking at the front door and eventually the defendant got up off the floor and answered it. The defendant then invited the officers into the house. R.41:28.

ARGUMENT

The Fourth Amendment to the United States Constitution provides, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. U.S. CONST. amend. IV. The Wisconsin Constitution essentially mirrors the same language. *See* WIS. CONST. art. I, § 11. Warrantless searches "are per se unreasonable under the fourth amendment, subject to a few carefully delineated exceptions" that are "jealously and carefully drawn." *State v. Boggess*, 115 Wis.2d 443, 449, 340 N.W.2d 516 (1983) (citation omitted).

In May of 2021, the United States Supreme Court held that the community caretaker exception does not authorize the warrantless search of a residence. *Caniglia v. Strom*, 141 S. Ct 1596, 1600 (2021). Despite eliminating the community caretaker doctrine as an exception to the Fourth Amendment's warrant requirement, the United States Supreme Court still recognizes that warrantless entry to a home may still be justified under the emergency aid doctrine "to render emergency assistance to an occupant or protect an occupant from imminent injury." *Brigham City v. Stuart*, 547 U.S. 398, 126 S.Ct. 1943, 164 L.Ed 2d 650 (2006).

In the State's Response to Defendant's Motion to Suppress Search, it conceded that law enforcement entered the curtilage of Dr. Gollon's home, but argued that the "search of the house was justified without a warrant under the community caretaker exception[.]" (R.18:1.) In retrospect, the State probably should have used the "emergency aid exception" as referenced in the footnote on page 2 of its Response. R.18: 1, fn. 1) As explained in that footnote, the "emergency aid" doctrine recognized by the United States Supreme Court is, essentially, the "community caretaker" standard was in Wisconsin. *State v. Pinkard*, 2010 WI 81, 327 Wis. 2d 346, 785 N.W.2d 592. The proper terminology, "emergency aid" rather than "community caretaker," will be utilized in this brief to avoid confusion.

The Wisconsin Court of Appeals further recognized the legitimacy of the emergency aid exception in its post-*Caniglia* decision, *State v. Ware*, 2021 WI App 83, 400 Wis. 2d 118, 968 N.W.2d 752. The Court of Appeals noted that the community caretaker exception could no longer justify the warrantless search of the home in that instance, so it framed its analysis "using the related—but conceptually distinct—emergency aid exception to the warrant requirement of the Fourth Amendment." *State v. Ware*, 2021 WI App 83, ¶15. As outlined in its Response to Defendant's Motion to Suppress Search, but mischaracterized as the "community caretaker" exception, the State argued that Lt. Long's search by peering into Dr. Gollon's garage without a warrant to determine if there was a vehicle parked in it that matched the vehicle involved in the crash a short distance away was justified under the emergency aid exception.

The Wisconsin Supreme Court has long held that, "[T]he objective test of the emergency rule is satisfied when, under the totality of the circumstances, a reasonable person would have believed that: (1) there was an immediate need to provide aid or assistance to a person due to actual or threatened physical injury; and (2) that immediate entry into an area in which a person has a reasonable expectation of privacy was necessary in order to provide that aid or assistance." *State v. Boggess*, 115 Wis. 2d at 452.

1. There Was An Immediate Need To Provide Aid Or Assistance To A Person Due To Actual Or Threatened Physical Injury Stemming From The Nearby Crash.

The evidence at the motion hearing showed that law enforcement received information about a single-car accident at the corner of Alder Street and, when they arrived at the scene, they observed damage to a tree and possibly a gas pipeline consistent with an automobile colliding with them. Law enforcement also found a bumper of a vehicle at the scene with a Wisconsin license plate attached to it, suggesting that it was from the car that was involved in the crash. The officers ran the license plate number through dispatch and found that the bumper belonged to a vehicle registered to the defendant, Dr. Roger Gollon, who only a few houses from the crash site.

Law enforcement then proceeded to the defendant's residence in a blend of their emergency aid and law enforcement functions to investigate the determine if anyone was injured and to further investigate the crash. Both Ofc. Beach and Sgt. Long testified that they were concerned that the driver, and/or someone else in the vehicle at the time of the crash, could have been injured and/or suffering from a medical condition that required medical attention. Sgt. Long even testified that it was part of his job to follow-up after a crash to see if anyone was injured.

Officer Beach proceeded to the front door of the residence and observed what appeared to be the lower legs of an individual lying on the floor toes up/back down inside the house. Sgt. Long arrived shortly thereafter and was advised of the situation (i.e. the person lying on the floor inside of the home).

The actions of law enforcement of going to the defendant's residence based on the evidence that the defendant's vehicle was involved in a crash several houses away from his residence only 15 minutes earlier, that the crash caused extensive damage to the vehicle, and that the driver of the defendant's vehicle then left the scene of the crash without reporting it to law enforcement.

Law enforcement was concerned about whether anyone was injured in the accident because the driver had fled the scene, which justified following-up at the defendant's

residence under their emergency aid function. "We have repeatedly explained that officers are charged with both law enforcement and community caretaker functions as part of their service of the public." *Pinkard*, 327 Wis.2d 346, ¶ 53.

> As an officer goes about his or her duties, an officer cannot always ascertain which hat the officer will wear——his law enforcement hat or her community caretaker hat. . . . Accordingly, the officer may have law enforcement concerns, even when the officer has an objectively reasonable basis for performing a community caretaker function. To conclude otherwise would ignore the multifaceted nature of police work and force police officers to let down their guard and unnecessarily expose themselves to dangerous conditions. (citation omitted.)

State v. Blatterman, 362 Wis. 2d 138, 170-71, 864 N.W.2d 26 (2015).

Once law enforcement arrived at Mr. Gollon's residence, the first thing they observed was a body lying on the floor inside the residence. Assuming the emergency aid doctrine was not already triggered by the crash itself and subsequent flight by the driver, the police officer's observation of a motionless, non-responsive individual lying on the floor of the kitchen of the house belonging to the registered owner of the vehicle just involved in a significant crash created "an immediate need to provide aid or assistance." The combination of the crash and the initial observations of law enforcement upon arriving at the defendant's residence triggered their emergency aid function.

2. Immediate Entry Into An Area In Which A Person Has A Reasonable Expectation Of Privacy Was Necessary In Order To Provide That Aid Or Assistance, If Necessary.

Upon receiving information from Ofc. Beach that there was an unresponsive person lying prone in the kitchen of the residence, Sgt. Long peered into the garage through the window to see if a vehicle matching the one involved in the crash was inside it, which would have suggested that the person lying prone inside the residence was the person who was just involved in the crash, and may be in need of medical services.

The person on the floor then began to move a little after Ofc. Beach continued knocking on the door and ringing the doorbell. Minutes later this individual, later identified as the defendant, Dr. Gollon, got up in response to the continued knocking and ringing of the

doorbell, and met the officers at the front door before inviting them inside the residence. It was at this point law enforcement first observed indications exhibited by the defendant that he had previously consumed intoxicants. R.41:12. He then voluntarily showed law enforcement his vehicle in the garage where they observed bits of a tree in the front of the vehicle, and that it was missing the front bumper, suggesting that it was the one involved in the crash they were investigating. The defendant was ultimately arrested for operating under the influence as a second offense.

In response to their emergency aid function kicking in at the point they realized there was someone inside the house belonging to the owner of the vehicle that was just involved in a crash lying motionless and unresponsive on the floor of the kitchen, the officers then "searched" the residence by looking through the window of the garage as part of that emergency aid function in an effort to deduce the potential seriousness of the situation by determining whether the vehicle from the crash was present at the residence.

The United States Supreme Court has specifically approved of warrantless entry to a home "to render emergency assistance to an occupant or protect an occupant from imminent injury." *Brigham City v. Stuart*, 547 U.S. 398, 126 S.Ct. 1943, 164 L.Ed 2d 650 (2006). With regard to Dr. Gollon's residence, no actual physical entry to the home was made—instead, the officers took the less intrusive alternative of looking into windows to determine whether the car involved in the crash was present at the residence because it was relevant to the potential need for medical attention for the incapacitated individual on the floor inside the residence.

3. Under The Totality Of The Circumstances, The Search Of The Defendant's Residence By Peering Through The Window Of The Garage To Determine If A Vehicle Matching The One Involved In The Crash Was Warranted.

The objective test for whether the emergency aid doctrine applies to a warrantless search must be made "under the totality of circumstances." *State v. Boggess*, 115 Wis. 2d at 452. Therefore, the question is whether the actions taken by the Stevens Point Police Department officers, in their dual function as law enforcement officers and emergency aid providers,

were reasonable under the totality of the circumstances that then existed to justify the warrantless search.

In *State v. Pinkard*, 2010 WI 81 at ¶ 59, the Court, in the context of discussing the community caretaking function, stated:

> Principles of reasonableness demand that we ask ourselves whether "'the officers would have been derelict in their duty had they acted otherwise.' " *Deneui*, 775 N.W.2d at 239 (quoting *State v. Hetzko*, 283 So.2d 49, 52 (Fla.Ct.App.1973)). Indeed, if the officers had done otherwise, perhaps by leaving the scene to obtain a warrant or waiting for an ambulance to arrive, we are convinced the citizens of the community would have understandably viewed the officers' actions as poor police work.

The law enforcement officers involved in this situation faced the same dilemma—take no action and risk harm to the motionless and non-responsive individual in the house, or take further minimally-intrusive action to gather more information as to whether the person lying prone in the house might have been involved in the crash. The officers chose to walk onto the grass of the residence and peer into the window of the garage without a warrant under their emergency aid function. They chose correctly.

4. The Use Of A Flashlight To Peer Into The Garage Does Not Render The Search Unjustified.

There was no testimony at the motion hearing about the use of a flashlight to peer into the garage window of the defendant's residence, and, therefore that issue is not the subject of this appeal. That being said, even if law enforcement did use a flashlight to do so, it does not affect the analysis under the emergency aid exception to the 4th Amendment's warrant requirement.

If the viewing of an object or area in natural light with the naked eye is not possible, the use of a flashlight in the darkness to illuminate the object or area for viewing should not convert the viewing into a search. The use of a flashlight to bring into plain sight what natural light would have revealed is not a search. *Bies v. State*, 76 Wis.2d 457, 472-73, 251 N.W.2d 461 (1977) (the discovery of cable in a garage by the use of a flashlight while the officer was standing outside of the garage satisfied the plain view requirement of the plain view doctrine); *State v. Spraggin*, 71 Wis.2d 604, 610, 239 N.W.2d 297 (1976) (the discovery of

a gun in a garage by the use of a flashlight); *Sanders v. State*, 69 Wis.2d 242, 256, 230 N.W.2d 845 (1975) (the discovery of a box of cartridges in a room by the use of a flashlight did not render the plain view doctrine inapplicable); *Anderson v. State*, 66 Wis.2d 233, 223 N.W.2d 879 (1974) (the discovery of tools in a car by the use of a flashlight while the officer was standing outside of the car); *State v. Bell*, 62 Wis.2d 534, 541, 215 N.W.2d 535 (1974) (the discovery of items in a car by the use of a flashlight while the officer was standing outside of the car); *Warrix v. State*, 50 Wis.2d 368, 373-74, 184 N.W.2d 189 (1971) (the discovery of items in a car by the use of a flashlight while the officer was standing outside of the car).

If Sgt. Long used a flashlight to look into the garage window, it does not change the overall legality of the search. Plain view does not apply in this instance, but if Sgt. Long was justified to perform the search under the emergency aid doctrine, it makes little sense to render that search illegal simply because he may have used a flashlight. After all, it would make no sense to allow Sgt. Long to be in the grass and peer into the garage window as part of his emergency aid function as a law enforcement officer, but not be able to use a flashlight to actually see what he was looking for in the garage. That conclusion would lead to an absurd result.

CONCLUSION

Law enforcement's presence at the defendant's residence was justified at its inception because the driver of the vehicle involved in the crash a few residences away then left the scene of the crash without reporting the incident, and may have returned home. Then, upon arriving at the front door of the residence, they observed the feet of an individual lying in the kitchen motionless and unresponsive to the knocking on the door and ringing of the doorbell.

An objectively reasonable interpretation of a that situation is that the person was injured in the crash and returned home to treat his/her wounds and/or injuries, or have someone else assist in treating them. Law enforcement's subsequent conduct of peering into the window of the garage in response to this situation falls squarely within their capacity as emergency

aid providers. Within seconds they verified that the car involved in the accident was in the garage, which gave them an additional objectively reasonable basis to think that the driver of the vehicle was also the person on the floor inside the residence, and that the person may have been injured or in need of assistance based on the person being in a traffic crash 15 minutes earlier.

This is exactly what the community wants, and quite frankly expects, of law enforcement others. To hold that their actions were unjustified would impair the vital societal function that law enforcement officers perform in the community.

Dated this 8th day of June, 2023.

Respectfully submitted,

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Electronically signed by Brian J. Pfeil

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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 4034 words.

Dated this 8th day of June, 2023.

Electronically signed by Brian J. Pfeil
Brian J. Pfeil
Assistant District Attorney

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (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 Wis. Stat. § (Rule) 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.

Dated this 8th day of June, 2023.

Electronically signed by Brian J. Pfeil
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