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CLERK OF WISCONSIN
SUPREME COURT

**STATE OF WISCONSIN
 SUPREME COURT**

STATE OF WISCONSIN

Plaintiff-Respondent,

vs.

Roger James Gollon
 Defendant-Appellant-Petitioner,

Supreme Court Case No.

Court of Appeals Case No.
 2023AP000086-CR

For Official Use

STATE'S RESPONSE TO DEFENDANT'S PETITION FOR REVIEW

This Court should deny the Petition for Review because the Court of Appeals applied the current law pertaining to the emergency aid exception to the 4th Amendment to the facts of this case, and correctly concluded that this case involved a perceived immediate need to provide aid or assistance such that law enforcement's immediate entry into the curtilage of the house was necessary in order to provide aid or assistance. In short, the petition cites to no error in the decision of the Court of Appeals for this Court to remedy.

Further, the Petition for Review should be denied because the law on the emergency aid exception to the 4th Amendment protection against unreasonable searches and seizures is clearly articulated in Wisconsin, as set forth in the decision of the Court of Appeals in *State v. Gollon*, Appeal No. 2023AP000086-CR. The Honorable Brian W. Blanchard, in an unpublished July 27, 2023, one-judge opinion, explained that,

This court has summarized the pertinent legal standards as follows:

One exception to the warrant requirement recognized by our supreme court concerns emergency aid. [*State v. Rome*, 2000 WI

App 243, ¶12, 239 Wis. 2d 491, 620 N.W.2d 225] (citing *State v. Pires*, 55 Wis. 2d 597, 201 N.W.2d 153 (1972)). This exception states that the Fourth Amendment does not bar a government official from making a warrantless intrusion “when the official reasonably believes that a person is in need of immediate aid or assistance.” *Id.* (citing [*State v. Boggess*, 115 Wis. 2d 443, 450, 340 N.W.2d 516 (1983)]); see also *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006) (“[L]aw enforcement officers may enter a residence without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.”). This exception is based upon the idea that “the preservation of human life is paramount to the right of privacy protected by the [F]ourth [A]mendment.” *Rome*, 239 Wis. 2d 491, ¶12.

Under this exception, “whether a warrantless home entry is justified based on the need to render assistance or prevent harm is judged by an objective test.” *State v. Larsen*, 2007 WI App 147, ¶18, 302 Wis. 2d 718, 736 N.W.2d 211. As a result, officers must have “an objectively reasonable basis for believing that a person within [the residence] is in need of immediate aid.” *Michigan v. Fisher*, 558 U.S. 45, 47 (2009) (per curiam) (citations omitted).

Wisconsin courts apply a two-part test in determining whether the emergency aid exception applies:

[U]nder the totality of 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.

Rome, 239 Wis. 2d 491, ¶16 (quoting *Bogges*, 115 Wis. 2d at 452). The United States Supreme Court has further explained that “[o]fficers do not need ironclad proof of ‘a likely serious, life-threatening’ injury to invoke the emergency aid exception.” *Fisher*, 558 U.S. at 49 (citations omitted).

State v. Ware, 2021 WI App 83, ¶¶20-22, 400 Wis. 2d 118, 968 N.W.2d 752 (*Ware* reflects third, sixth, and seventh alterations).

Gollon, No. 2023AP000086-CR at ¶ 45.

Lastly, the Court of Appeals addressed the relatively recent U.S. Supreme Court decision in *Caniglia v. Strom*, 141 S. Ct. 1596, 209 L.Ed.2d 604 (2021), which holds that the community caretaker exception does not authorize the warrantless search of a residence. “The Court explained in *Caniglia* that the community caretaker exception is limited to the context of automobile searches and cannot justify a warrantless search of a residence. *Caniglia*, 141 S. Ct. at 1598, 1600.” *Gollon*, No. 2023AP000086-CR at ¶ 41. The matter before this Court on petition for review, however, involves the application of the emergency aid doctrine to a residence (and/or the curtilage thereof), and not the community caretaker exception, so the decision in *Caniglia* has no bearing on the emergency aid doctrine’s application to warrantless searches of residences.

The status of the 4th Amendment law in Wisconsin does not require clarity or further development. The application of the emergency aid exception is an objective exercise done on a case-by-case basis to the facts of each respective case. There is no further clarity for this Court to provide about the law, and the law does not need to be further developed, so the status of the emergency aid exception is not ripe for re-examination. As such, the Petition for Review should be denied because it does not meet the criteria under Wis. Stat. §809.62(1r), or any other reason, for granting review.

Dated this 22nd day of November 2023

STATE OF WISCONSIN
Plaintiff/Respondent

Electronically signed by Brian J. Pfeil
Assistant District Attorney
State Bar No. 1029914