COA No. 384268

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION III

STATE OF WASHINGTON,
Respondent

v.

ULUI TEULILO,
Petitioner.

ON INTERLOCUTORY REVIEW FROM THE DOUGLAS COUNTY SUPERIOR COURT

No. 18-1-00163-7

RESPONDENT'S BRIEF

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A. INTRODUCTION

There are two issues to be resolved in this interlocutory review. The first issue is whether Washington State's version of the community caretaking exception to the constitutional warrant requirement is now defunct in light of the United States Supreme Court decision in *Caniglia v. Strom*, 141 S. Ct. 1596, 209 L. Ed. 2d 605 (2021). Should this warrant exception remain intact, the second issue is whether Douglas County Deputy Sheriff Bill Black's warrantless entry into the Teulilo home satisfied both prongs of the community caretaking exception for a health and welfare check, and emergency aid.

B. ASSIGNMENT OF ERROR

Respondent, State of Washington, assigns no errors to the trial court's denial of the motion to suppress.

C. STATEMENT OF THE CASE

Deputy Black, acting on a missing person report (RP 12), entered the Teulilo home without a warrant and discovered the brutally murdered body of Peggy Teulilo (RP 26-28). Ului Telilo was arrested and charged for his wife's murder. The defendant filed a motion to suppress the evidence derived from the warrantless search. CP 1. After a hearing, the court denied the motion to suppress and entered its findings of fact and conclusions of law. CP 85-91. The circumstances and plethora of facts surrounding the finding of Peggy's body are contained in the court's findings, Appellant's brief, and in the report of proceedings filed with this court.

D. ARGUMENT

Defendant lodges two attacks on the trial court's denial of his motion to dismiss. The first is that Washington's community caretaking exception to the warrant requirement is vitiated by the recent Supreme

Court case of *Caniglia v. Strom*, 141 S. Ct. 1596, 209 L. Ed. 2d 605 (2021). Second, even if Washington's community caretaking exception is still valid, the trial court's findings of fact and conclusions of law are deficient and incorrect.

1. Standard of Review.

A denial of a motion to suppress is reviewed "to determine whether substantial evidence supports the trial court's findings of fact and whether the findings of fact support the trial court's conclusions of law." *State v. Boisselle*, 194 Wn.2d 1, 14, 448 P.3d 19 (2019). Conclusions of law are reviewed de novo. *State v. Gaines*, 154 Wn.2d 711, 716, 116 P.3d 993 (2005); *State v. Harris*, 9 Wn.App. 2d 625, 631, 444 P.3d 1252 (2019).

2. Community Caretaking Exception.

Washington's version of the community caretaking exception to the warrant requirement is still intact despite the broad language of *Caniglia* announcing the demise of

such exception. As will be noted more fully below, defendant's challenge is "more labeling than substance." With the heightened protections to warrantless entries into homes afforded under Washington's constitution and case law, our community caretaking exception ensures the protection of valued privacy rights in the home while at the same time helping those who may be in need of physical assistance.

Warrantless searches are per se unreasonable unless one of the narrow exceptions to the warrant requirement applies. *State v. Kinzy*, 141 Wn.2d 373, 384, 5 P.3d 668 (2000). The State bears the burden of showing a warrantless search falls within one of the exceptions. *Id.*

The Washington Supreme Court clarified the appropriate factors for determining whether an officer has exercised his or her emergency aid community caretaking function. *Boisselle*, 194 Wn.2d at 10. "[I]n order for the

community caretaking exception to apply, a court must first be satisfied that the officer's actions were 'totally divorced' from the detection and investigation of criminal activity." *Boisselle*, 194 Wn.2d at 11 (quoting *State v. Kinzy*, 141 Wn.2d 373, 385, 5 P.3d 668 (2000)). The threshold issue for the court is "whether the community caretaking exception was used as a pretext for a criminal investigation before applying the community caretaking exception test." *Boisselle*, 194 Wn.2d at 11.

Once the court is satisfied that officers did not use the exception as pretext for a criminal investigation, the court must next determine whether the warrantless search was reasonable. *Boisselle*, 194 Wn.2d at 10. "When a warrantless search falls within an officer's general community caretaking function, such as the performance of a routine check on health and safety, courts must next determine whether the search was reasonable." *Boisselle*, 194 Wn.2d at 11-12. "'Where ...

an encounter involves a routine check on health and safety, its reasonableness depends upon a balancing of a citizen's privacy interests in freedom from police intrusion against the public's interest in having police perform a community caretaking function.'" *Boisselle*, 194 Wn.2d at 12 (alteration in original) (internal quotation marks omitted) (quoting *Kinzy*, 141 Wn.2d at 394).

"An officer's emergency aid function, however, 'arises from a police officer's community caretaking responsibility to come to the aid of persons believed to be in danger of death or physical harm.'" *Boisselle*, 194 Wn.2d at 12 (internal quotation marks omitted) (quoting *Kinzy*, 141 Wn.2d at 386 n.39). "'[C]ompared with routine checks on health and safety, the emergency aid function involves circumstances of greater urgency and searches resulting in greater intrusion.'" *Boisselle*, 194 Wn.2d at 12 (alteration in original) (quoting *Kinzy*, 141 Wn.2d at 386). "Accordingly, courts apply additional factors to determine

whether a warrantless search falls within the emergency aid function of the community caretaking exception." *Boisselle*, 194 Wn.2d at 12. The test to determine when the emergency aid function of the community caretaking exception applies is:

> 1) the officer subjectively believed that an emergency existed requiring that he or she provide immediate assistance to protect or preserve life or property, or to prevent serious injury, (2) a reasonable person in the same situation would similarly believe that there was a need for assistance, and (3) there was a reasonable basis to associate the need for assistance with the place searched.

Id.

With Washington's community caretaking framework in mind, we turn then to whether it survives *Caniglia.* In that case, while the United States Supreme Court rejected a broad "freestanding community caretaking exception" to the warrant requirement, the Court nevertheless still recognized that "the need to 'render emergency assistance to an injured occupant or

to protect an occupant from imminent injury'" can permit a warrantless search of someone's property. *Caniglia v. Strom*, 141 S. Ct. 1596, 209 L. Ed. 2d 605 (2021)(quoting *Kentucky v. King*, 563 U.S. 452, 460, 470, 131 S. Ct. 1849, 179 L. Ed. 2d 865 (2011). No emergency existed in *Caniglia* that justified a warrantless entry to confiscate firearms inside the home of a man who was taken away for a psychiatric evaluation. Yet the First Circuit had held that "[a]ll that mattered was that [the police's] efforts to protect [the man] and those around him were distinct from the normal work of criminal investigation, fell within the realm of reason, and generally tracked ... sound police procedure." *Id.* The Supreme Court unanimously disapproved of the creation of a "standalone doctrine" allowing for warrantless entry into the home for such caretaking purposes. *Id.*, at 1598.

A number of concurring Justices joined the opinion based on an understanding that the decision did not

disrupt long-standing authority allowing an officer to take "reasonable steps to assist those who are inside a home and in need of aid." See, e.g., *Id.*, at 1602 (Kavanaugh, J., concurring). In his concurrence, Justice Kavanaugh explained that the exigent circumstances doctrine applies in a variety of circumstances, including the need to render aid. *Id.*, at 1603. Most telling is Justice Kavanaugh's understanding of the compelling realities of society that make a strict application of the warrant requirement unworkable and unnecessary.

> That said, this Fourth Amendment issue is more labeling than substance. The Court's Fourth Amendment case law already recognizes the exigent circumstances doctrine, which allows an officer to enter a home without a warrant if the "exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Brigham City*, 547 U. S., at 403, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (internal quotation marks omitted); see also ante, at ___, 209 L. Ed. 2d, at 607. As relevant here, one such recognized "exigency" is the "need to assist persons who are seriously injured or threatened with such injury." *Brigham City*, 547 U. S., at 403, 126 S. Ct. 1943,

164 L. Ed. 2d 650; see also ante, at ___, 209 L. Ed. 2d, at 608 (Roberts, C. J., concurring). The Fourth Amendment allows officers to enter a home if they have "an objectively reasonable basis for believing" that such help is needed, and if the officers' actions inside the home are reasonable under the circumstances. *Brigham City*, 547 U. S., at 406, 126 S. Ct. 1943, 164 L. Ed. 2d 650; see also *Michigan v. Fisher*, 558 U. S., at 47-48, 130 S. Ct. 546, 175 L. Ed. 2d 410.

This case does not require us to explore all the contours of the exigent circumstances doctrine as applied to emergency-aid situations because the officers here disclaimed reliance on that doctrine. But to avoid any confusion going forward, I think it important to briefly describe how the doctrine applies to some heartland emergency-aid situations.

As Chief Judge Livingston has cogently explained, although this doctrinal area does not draw much attention from courts or scholars, "municipal police spend a good deal of time responding to calls about missing persons, sick neighbors, and premises left open at night." Livingston, Police, Community Caretaking, and the Fourth Amendment, 1998 U. Chi. Leg. Forum 261, 263 (1998). And as she aptly noted, "the responsibility of police officers to search for missing persons, to mediate disputes, and to aid the ill or injured has never been the subject of serious debate; nor has" the "responsibility of police to provide services in an emergency." *Id.*, at 302.

> Consistent with that reality, the Court's exigency precedents, as I read them, permit warrantless entries when police officers have an objectively reasonable basis to believe that there is a current, ongoing crisis for which it is reasonable to act now. See, e.g., *Sheehan*, 575 U. S., at 612, 135 S. Ct. 1765, 191 L. Ed. 2d 856; *Michigan v. Fisher*, 558 U. S., at 48-49, 130 S. Ct. 546, 175 L. Ed. 2d 410; *Brigham City*, 547 U. S., at 406-407, 126 S. Ct. 1943, 164 L. Ed. 2d 650. The officers do not need to show that the harm has already occurred or is mere moments away, because knowing that will often be difficult if not impossible in cases involving, for example, a person who is currently suicidal or an elderly person who has been out of contact and may have fallen. If someone is at risk of serious harm and it is reasonable for officers to intervene now, that is enough for the officers to enter.

Id. at 1603-04 (Kavanaugh, J., concurring).

Justice Kavanaugh then provided several examples, one being:

> Suppose that an elderly man is uncharacteristically absent from Sunday church services and repeatedly fails to answer his phone throughout the day and night. A concerned relative calls the police and asks the officers to perform a wellness check. Two officers drive to the man's home. They knock but receive no response. May the officers enter the home? Of course.

Id., at 1605 (Kavanaugh, J., concurring).

Justice Alito in his concurrence weighed in with his understanding that *Caniglia* did not vitiate warrantless entry into a home for routine health and welfare checks.

> One additional category of cases should be noted: those involving warrantless, nonconsensual searches of a home for the purpose of ascertaining whether a resident is in urgent need of medical attention and cannot summon help. At oral argument, THE CHIEF JUSTICE posed a question that highlighted this problem. He imagined a situation in which neighbors of an elderly woman call the police and express concern because the woman had agreed to come over for dinner at 6 p.m., but by 8 p.m., had not appeared or called even though she was never late for anything. The woman had not been seen leaving her home, and she was not answering the phone. Nor could the neighbors reach her relatives by phone. If the police entered the home without a warrant to see if she needed help, would that violate the Fourth Amendment?
>
> Petitioner's answer was that it would. Indeed, he argued, even if 24 hours went by, the police still could not lawfully enter without a warrant. If the situation remained unchanged for several days, he suggested, the police might be able to enter after obtaining "a warrant for a missing person."
>
> THE CHIEF JUSTICE's question concerns an important real-world problem. Today, more than ever, many people, including many elderly persons,

> live alone. Many elderly men and women fall in their homes, or become incapacitated for other reasons, and unfortunately, there are many cases in which such persons cannot call for assistance. In those cases, the chances for a good recovery may fade with each passing hour. So in THE CHIEF JUSTICE's imaginary case, if the elderly woman was seriously hurt or sick and the police heeded petitioner's suggestion about what the Fourth Amendment demands, there is a fair chance she would not be found alive. This imaginary woman may have regarded her house as her castle, but it is doubtful that she would have wanted it to be the place where she died alone and in agony.

Id., at 1601-02 (Alito, J., concurring).

Though important, the holding in *Caniglia* is modest in its reach. The Supreme Court repudiated an expansive "community caretaking" exception to the general warrant requirement to enter a home limited to the facts of that particular situation. But the Court did not venture beyond that point to decide the permissible scope of all the various warrantless entries into a home for purposes other than criminal law enforcement.

As revealed more fully in *Boisselle*, Washington State's version of the community caretaking exception is more restrictive than the broad, expansive standalone doctrines adopted by other jurisdictions having the same name but defective in their definition and application. Our community caretaking exception is narrowly tailored to allow warrantless entry only when someone inside is in need of assistance or when there is an emergency, either exigency satisfying *Caniglia*.

3. Findings of Fact Supported by Substantial Evidence.

Teulilo challenges findings of fact 2.17, 2.18, and 2.19, as not being supported by substantial evidence. As such the remainder of the findings are unchallenged and thus verities on appeal. *State v. Inman*, 2 Wn.App. 2d 281, 287, 409 P.3d 1138 (2018). In determining the sufficiency of evidence on appeal there must be "substantial evidence" to support a trial court's written

findings. *State v. Alvarez*, 105 Wn.App. 215, 220, 19 P.3d 485 (2001). Substantial evidence is satisfied by both direct and circumstantial evidence, with no greater weight placed on either type of evidence. *State v. Delmarter*, 94 Wn.2d 634, 637-38, 618 P.2d 99 (1980); *In re Disciplinary Proceeding Against Abele*, 184 Wn.2d 1, 12-13, 358 P.3d 371 (2015). Facts may be inferred where "plainly indicated as a matter of logical probability," *State v. Delmarter*, 94 Wn.2d at 638, and the finder of fact determines what conclusions reasonably flow from the circumstantial evidence. *State v. Bencivenga*, 137 Wn.2d 703, 711, 974 P.2d 832 (1999).

a. Finding of Fact 2.17

There is no real question that Deputy Black was genuinely concerned for Peggy's physical well-being, and that such concern was based on several factors, which, in turn, constitute the "totality of the circumstances." RP 32 – 36. Teulilo's main argument is essentially that Deputy

Black should not have been allowed to have this concern because he "had no idea" what, if anything, had happened to Peggy, and that he had no idea whether Peggy was in the trailer.

Even Justices Kavanaugh and Alito in *Caniglia* recognized that officers need not know for certain whether someone is in need of help, only that they have a reasonable basis to investigate such reasonable concerns. As noted above, Justice Kavanaugh stated, "[t]he officers do not need to show that the harm has already occurred or is mere moments away, because knowing that will often be difficult if not impossible ... ." *Caniglia,* at 1605.

Similarly, Justice Alito noted one of the purposes of warrantless, nonconsensual searches of a home is "for the purpose of *ascertaining whether* a resident is in urgent need of medical attention and cannot summon help." *Id.*, at 1601.

As to the finding Deputy Black believed the trailer was the most likely place to search for Peggy, while not expressly stated by Deputy Black, it certainly could be implied. An officer's implied belief can be ascertained by words and actions. See *In re Pers. Restaint of Lui*, 188 Wn.2d 525, 557, 397 P.3d 90 (2017)(Detective's statements implied a belief that defendant was guilty). The court is permitted to reach conclusions about Deputy Black's implied belief using circumstantial evidence, and the logical inferences arising therefrom.

Deputy Black's testimony was replete with his knowledge, thoughts, and actions which demonstrated his belief that Peggy may be inside the trailer and in need of assistance: (1) Peggy resided at the trailer (RP 16); (2) Peggy's car was at the trailer (RP 16, 18-19); (3) Peggy was not at work and her employer was concerned for her well-being, mentioning a pistol (RP 23); (4) Peggy would not miss work without calling first, and she had not called

(RP 23); (5) Peggy had communicated with law enforcement about her husband's previous threats (RP 14), including threats to blow her brains out with a gun (RP15); (6) Peggy did not answer Black's phone calls; (7) Peggy had recently gotten a new phone (RP 18, 20); (8) Black approached the trailer door three separate times (RP 17, 22, 26); (9) the trailer door was unlocked (RP 22); (10) Black opened the door and announced himself without entering and without getting a response; (11) Black testified, "something wasn't right ... [a]fter all those things combined, I believed something could have been wrong." (RP 33, 48): (12) and it was when Black opened the door a second time that he entered (RP 26). With all of the above in mind, there was substantial evidence for the court to make the finding that Deputy Black believed it was most likely that Peggy was in the trailer and in need of assistance.

b. Finding of Fact 2.18

In terms of Deputy Black's testimony as to why he entered the Teulilo home, there is no question his actions demonstrated he was investigating a missing person and not a crime. Even Teulilo stipulates that Dep. Black was not investigating a crime, and, as such, there is no need to discuss whether this finding is supported by substantial evidence. See Brief of Appellant at 19.

c. Finding of Fact 2.19

Again, Teulilo is not really challenging the court's findings that Deputy Black and other law enforcement and neighbors have entered homes out of concern for someone's physical well-being. What Teulilo is essentially complaining about is that this finding is irrelevant because it serves "as a basis for an improper understanding of the law." *Id.* Since there is no serious challenge to the evidence supporting this finding, it should be deemed as substantiated. What legal

conclusions that may be drawn from this finding are a different matter.

4. Conclusions of Law

a. COLs 3.1, 3.2, 3.3, and 3.4.

Teulilo's objections to the first four conclusions of law are based on Deputy Black's candid admission that he did not know if Peggy was inside the residence and if she was in need of assistance. The argument essentially is that without certainty of her location and condition, then no entry is allowed. The fundamental disconnect here is that in the context of a missing person report, no one knows where the person is or what their condition might be, but that has never, and will never stop the police from investigating, and entering a home without a warrant if justified by the circumstances. *Caniglia* certainly does not stand such a broad pronouncement as argued by Teulilo.

The key is to determine whether under the totality of the circumstances Deputy Black subjectively believed that an emergency existed requiring him to provide immediate assistance to protect life, that a reasonable person in the same situation believe the same, and there was a reasonable basis to associate the need for assistance with the place searched.

Many courts have recognized that a domestic violence missing person situation is an emergency necessitating an officer's warrantless entry in to a home. See, *for e.g.*, the discussion in *State v. Carlson*, 548 N.W.2d 138, 143 (Iowa 1986):

> In applying the objective test we consider all the foregoing matters that were known by the officers. We must also keep in mind that one crucially important thing was not then known. Although it seemed highly likely that some terrible harm may have befallen her, requiring a rescue, the officers did not know that Rita was dead; they were searching for Rita, not her body.
>
> Under these circumstances a reasonable person would have thought an emergency existed. Hence

> we find the police provided sufficient evidence to establish the objective test and we hold the search was valid under the emergency-aid exception to the warrant requirement. To do so is no threat to a citizen's fundamental right to be protected against unreasonable searches and seizures. Precious as that right is, the officers were correct in recognizing that it must yield to a citizen's right to be rescued from death or terrible harm. Although the officers here arrived too late to rescue Rita, they were unaware of her death when they entered Carlson's residence. It was model police conduct, deserving of commendation, not condemnation. Although the public cannot always demand, or even expect, model police conduct, it would doubtlessly have been surprised--and disappointed--if the officers had done less.

The salient facts in *Carlson* are that: a daughter could not get a hold of her mother Rita; Rita's boyfriend had a past history of domestic violence towards her; Rita had secretly been attempting to establish her own residence; and women are at a greater risk of injury or death when they are attempting to end an abusive relationship. Id. at 142-143.

In *Carlson*, the court acknowledged two important keys: 1) investigating officers need not know for certainty

of a need for assistance; and 2) circumstances surrounding a missing domestic violence victim may constitute an emergency.

Other courts analyzing missing persons under clouds of domestic violence, combined with other circumstances, have come to the same conclusion: this is an emergency. See *People v. Kulpin*, 2021 IL App (2d) 180696, 180 N.E. 3d 800 (2021)(missing girlfriend, history of domestic violence, victim's car in apartment parking lot, inconsistent statements by boyfriend to police); *Gipson v. State*, 82 S.W. 3d 715 (2002)(prior domestic violence, friend did not answer phone, door was locked, child left outside unattended).

The court in *Commonwealth v. Entwistle*, 463 Mass. 205, 214, 973 N.E.2d 115 (2012), noted under a warrantless entry into a home to locate a missing person that:

> Officers do not need ironclad proof of 'a likely serious, life-threatening' injury to invoke the emergency aid exception. It suffices that there are objectively reasonable grounds to believe that emergency aid *might be needed.*

Id. (citations omitted)(emphasis added).

In the matter at hand, the trial court correctly concluded, for the reasons noted in its written findings and conclusions, that Deputy Black had a reasonable basis to believe that Peggy was inside the residence and in need of assistance even though he "had no idea" what had happened or where Peggy was.

b. COL 3.5

The court's conclusion that Deputy Black's thoughts and actions were totally divorced from his search for her and were not a pretext for a criminal investigation are substantiated by the testimony. The court heard Deputy Black testify that he was not investigating a crime (RP 33), and decided that he was telling the truth (CP 85). Questions of credibility are for the trier of fact, and

defense counsel's incredulity is not a valid basis for disregarding the court's finding and conclusion on this issue. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

It is important to note the court's finding stated that Deputy Black's investigative actions "were totally divorced" from his missing person investigation. The court did not say that Deputy Black did not have a concern that Peggy may have been the victim of foul play. Deputy Black testified that he was aware of the prior domestic violence incidents that had been reported to law enforcement, and those incidents contributed to his concerns for Peggy. RP 33. The upshot being that Peggy may very well have been the victim of domestic violence.

However, simply being cognizant of the reason Peggy may be in danger, does not mean that Deputy Black's actions were not motivated by his desire to provide her assistance if needed. An officer's concurrent

awareness that a missing person might be the victim of foul play has been held not to be a reason to dispel his or her genuine concern for the safety of the missing person.

> We believe it is self-evident that an officer who is responding, in the officer's community caretaking function, to a call about a missing person must also remain cognizant of the fact that any missing-person situation could ultimately involve a crime and a criminal investigation. It would defy reason to suggest that an officer in that situation should not, while responding to the call in a community caretaking function, employ skills derived from his or her criminal investigation training—such as, for example, noting anything out of the ordinary, like the presence in the neighborhood in question of unusual or suspicious persons or vehicles—in the same manner that he or she would employ those skills while dispatched to an active crime scene with the express purpose of investigating that crime.

People v. Woods, 2019 IL App (5th) 180336, 30-31, 145 N.E.3d 80, 91-92 (2019).

c. COLs 3.6, 3.10, and 3.11.

The challenge to these three conclusions are essentially the same, and that is warrantless re-entry by Deputy Black, and the warrantless entry by two other

deputies upon their arrival were not permitted by law because the initial entry by Black was not authorized.

That argument is only true if this court disagrees with the trial court and otherwise finds the initial entry was unlawful. However, where the initial entry is lawful, then the subsequent entries are permissible under the plain view doctrine. See *State v. Smith*, 177 Wn.2d 533, 303 P.3d 1047 (2013)(citing *State v. Stevenson*, 55 Wn.App. 725, 728, 780 P.3d 873 (1989)(overturned on other grounds by *In re Pers. Restraint of Brooks*, 197 Wn.2d 94, 480 P.3d 399 (2021)). In fact, "once the privacy of the residence lawfully has been invaded, it is senseless to require a warrant for others to enter and complete what those already on the scene would be justified doing." *Stevenson*, 55 Wn.App. 731. Subsequent entries do have limitations. The limitation is that "the officers who enter later may not exceed the scope of the earlier intrusions." *Id.*

In *Stevenson*, after multiple bodies were discovered in a residence during the initial warrantless entry, the officers "took note of numerous evidentiary items in plain view, including poos and splattering blood ... shell casings ... and a .22 caliber rifle nearby." *Id.*, at 728. The officers then left the residence without removing any of the items and waiting for the more equipped and experience Criminal Investigative Unit to arrive. *Id.* The investigative unit then spent several hours taking over 200 photographs and collected blood samples, semen samples, spent shell casings, firearms, and bullets – all without a search warrant. *Id.*

On appeal, all items seized, with the exception of one item, were deemed properly collected under the plain view doctrine. *Id.,* at 731. Only the bullet that was imbedded in a bed post that had to be dug out was suppressed because it was not in plain view. *Id.*

Once Deputy Black's warrantless entry is deemed lawful, then subsequent entries made by him and others are allowed under the plain view doctrine so long as they do not exceed the scope of the initial intrusion. In this instance the actions taken by Black, Sgt. Detective Jason Demyer, and Chief Steven Groseclose did not exceed what had been seen by Black after the initial entry, and they are de minimus in comparison to the lawful several hours long re-entry by officers in *Stevenson*.

d. COL 3.7

There are two prongs to the community caretaking function: (1) the emergency aid exception; and (2) the health and safety check exception. However, the two prongs are not necessarily mutually exclusive to each other. The emergency aid prong involves greater urgency and allows for greater intrusions. The health and safety prong also allows for warrantless entries but calls

for lesser intrusion and a balancing of competing interests.

Boisselle amended the emergency aid function test set forth *State v. Kinsey,* 141 Wn.2d 373, 5 P.3d 668 (2000), by clarifying that there "must be a present emergency for the emergency aid function test to apply." *State v. Boisselle*, 194 Wn.2d at 13-14. *Boisselle*, however, did not abrogate the routine checks on health and safety prong of the community caretaking function as an exception to the warrant requirement. That particular prong is still in effect in Washington State. The question then becomes whether Washington's version of that prong satisfies *Caniglia*; and it does.

The three part test for the health and safety check exception is (1) the officer subjectively believed someone needed health or safety assistance, (2) a reasonable person in the same situation would believe that there was a need for assistance, and (3) there was a reasonable

basis to associate the need for assistance with the place searched. *State v. Thompson*, 151 Wn.2d 793, 802, 92 P.3d 228 (2004); *State v. Weller*, 185 Wn.App. 913, 924-25, 344 P.3d 695 (2015). After satisfying the three-part test, the State must show that the encounter under this exception was reasonable, which depends on a balancing of the individual's interest in freedom from police interference against the public's interest in having the police perform a community caretaking function. *Id.* "When weighing the public's interest, this [c]ourt must cautiously apply the community caretaking function exception because of the potential for abuse." *Kinzy*, 141 Wn.2d at 391.

The facts previously presented show that Deputy Black's actions satisfy the three-part test for a health and welfare check. Further, Deputy Black's entry was minimally intrusive where when he opened the door the second time he only needed to step just inside the

doorway of this small fifth wheel trailer and simply turn to his left and then to his right to have visual access to the living room/kitchen area to the left and the bedroom area to the right. RP 27. After seeing Peggy's body in plain view, Deputy Black approached her but when he saw that she was deceased and suffered severe trauma he left the trailer to call his supervisor. RP 29. Even after he re-entered the trailer to look for a gun, Deputy Black did not touch anything. RP 30. This balancing process shows that Deputy Black's initial entrance was justified because of the public's interest in having Black perform a welfare check on Peggy outweighed Teulilo's privacy interest in the deputy taking one step into the residence to confirm or dispel his concerns.

e. COL 3.8

This conclusion is supported by the facts showing that the emergency aid function was appropriate as well. Teulilo's complaint is that because Black took so long to

enter he did not really believe there was an emergency. The fact that an officer takes proper safeguards does not undercut the conclusion that he was responding to an emergency. See *State v. Mordente,* 444 N.J. Super. 393, 398-400, 133 A.3d 684, 687-88 (2016)(Responding officer followed established protocol when he called in a specially trained missing persons unit, taking more than an hour before beginning the search of a multi-level home for a missing elderly woman with dementia).

E. CONCLUSION

The record clearly demonstrates Deputy Black's warrantless entry into the Teulilo home was driven by a sincere motive to locate Peggy, and was not a pretext for a criminal investigation. Under the totality of the circumstances known to him at the time of his entry, the record satisfies both prongs of the community caretaking exception to the warrant requirement: (1) that an

emergency situation existed; and (2) that Black was conducting a routine health and safety check. And the scope of the search was limited to no more than what was needed to confirm or dispel Deputy Black's concerns.

Further, Washington's version of the community caretaking exception under either prong has sufficient safeguards to satisfy the concerns addressed in *Caniglia*. Based on the foregoing arguments the trial court's pre-trial suppression order should not be overturned.

RESPECTFULLY SUBMITTED this 1st day of August, 2022.

This document contains 5,507 words.

W. Gordon Edgar, WSBA No. 20799
Douglas County Prosecuting Attorney

CERTIFICATE OF SERVICE

I, W. Gordon Edgar, hereby declare that on this date, I caused to be served a true and correct copy of the foregoing Respondent's Brief upon the following parties in interest by e-mail service by prior agreement (as indicated), to:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed in Waterville, Washington this 1st day of August, 2022.

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August 01, 2022 - 1:21 PM

Transmittal Information

Filed with Court:	Court of Appeals Division III
Appellate Court Case Number:	38426-8
Appellate Court Case Title:	State of Washington v. Ului Lakepa Teulilo
Superior Court Case Number:	18-1-00163-7

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