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No. 101385-0
COA #38426-8-III

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ULUI TEULILO,

Petitioner.

PETITIONER'S ANSWER BRIEF
TO AMICI BRIEFS

Richard D. Gilliland WSBA #40474
Hall and Gilliland PLLC
Attorney for Petitioner
1111 W. Yakima Ave.
Yakima, WA 98902
509-452-8120
richard.gilliland@handglegal.com

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A. TABLE OF AUTHORITIES

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B. ISSUES FROM AMICI BRIEFS

1. Should this Court decline to create a rule that directly contradicts *Caniglia* and functionally allows entry into the home whenever there is a 911 call as requested by the Washington Fire Chief's Association ("WFC")?
2. Do the facts of this case fail to meet the emergency aid exigent circumstance as claimed by WAPA considering WAPA failed to analyze this case under the rule WAPA purports to support?

C. STATEMENT OF THE CASE

The facts in this case are agreed by all parties, and are detailed more fully in Petitioner's Court of Appeals Memorandum. Ms. Teulilo called the police on July 24, 2018, and during this call stated that she was planning to leave Petitioner Ului Teulilo, her husband. The next morning, Deputy Black was dispatched to Mr. Teulilo's residence for a welfare check on Mr. Teulilo's wife following her employer calling the police to say she was late for work. Deputy Black did not know what time Ms. Teulilo was supposed to arrive at work.

At about 10:46 am, Deputy Black arrived at the Teulilo residence. Upon arrival, Deputy Black knocked on the side door of the Teuilos' fifth wheel trailer and received no response. Deputy Black also announced "sheriff's office" several times and called out Ms. Teulilo's name loud enough so that someone in the trailer could hear, but received no response.

Deputy Black subsequently called Mr. Teulilo at work, confirming that Mr. Teulilo was not at the Teulilo residence.

Deputy Black proceeded to make multiple calls to a number for Ms. Teulilo provided by Mr. Teulilo as well as other numbers he found associated with Ms. Teulilo on Spillman with no response nor sound of a phone ringing from inside the Teuilos' fifth wheel residence.

Deputy Black called his supervisor who ordered him to check the door and announce "sheriff's office". Prior to checking the door, however, Deputy Black called Ms. Teulilo's number again with no response.

Eventually, Deputy Black opened the door and, without entering, and announced "sheriff's office". There was no response and no sounds from within the trailer.

Deputy Black then called his supervisor who instructed Deputy Black to look around the residence to ensure nothing was amiss. Deputy Black's supervisor justified this entrance as "community caretaking." Prior to entering the residence, it had been about 30-40 minutes since Deputy Black received his call out.

Deputy Black opened the door, again announced “sheriff’s office” and entered the residence which was cluttered but tidy. Upon looking down the hallway Deputy Black observed a deceased female.

Prior to entering the residence, Deputy Black had no idea what, if anything had happened to Ms. Teulilo. In addition, prior to entering the residence Deputy Black had no idea if Ms. Teulilo was even in the residence, where she was at all, whether she needed any help, whether she had been the victim of an assault or other crime, whether she was deceased, whether she was injured, whether she slept in, or whether she was simply ignoring him. What Deputy Black did know was that if there had been someone in the residence, they would have heard his knocking and calling.

Moreover, prior to entering the Teulilo residence, Deputy Black did not go to the neighbor’s residence approximately 20-25 feet away to make any inquiries about Ms. Teulilo. Deputy Black also failed to request Mr. Teulilo’s permission to enter the

residence, nor request Mr. Teulilo make the very short drive back to his residence to look for Ms. Teulilo

D. ARGUMENT

1. Washington Fire Chief's Association ("WFC") ask this Court to follow a rule that directly contradicts SCOTUS holding in Caniglia.

WFC's brief makes numerous legal and logical leaps which directly contradict SCOTUS holding in *Caniglia*. *Caniglia v. Strom*, 593 U.S. ___, 141 S.Ct. 1596, 209 L.Ed. 2d 604 (2021).

First, WFC jumps immediately from case law such as *Clifford* and *Picard*, which hold that entry into a burning building is an exigency not requiring a warrant to the following conclusion to the following statement:

“Logically then, the entry into a home by fire and EMS personnel for the provision of emergency medical services or to provide assistance for health or safety reasons without a warrant would be justified based on the exigencies of the situation.”

WFC Brief at 7, citing *State v. Picard*, 90 Wn.App. 890, 954 P.2d 336 (1998) and *Michigan v. Clifford*, 464 U.S. 287, 104, S.Ct. 641, 78 L.Ed.2d 477 (1984).

WFC's assertion that entry into a burning home without a warrant justifies EMS personnel's warrantless entry into a home for "health and safety reasons" is not compliant with *Caniglia*. Furthermore, WFC provides no case law nor probative examples to support the assertion that EMS personnel entering an actively burning building without a warrant demonstrates that all health and safety entries by EMS personnel qualify as an exigent circumstance..

Second, WFC claims that *Caniglia* is limited to its facts. *WFC Brief* at 10. This claim is, simply put, not true. In fact, *Caniglia* directly contradicts WFC's claim with its very language: "The question today is whether *Cady's* acknowledgment of these 'caretaking' duties creates a standalone doctrine that justifies warrantless searches and seizures in the home. It does not." *Caniglia* at 1598, citing *Cady v. Dombrowski*, 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973).

Third, WFC asserts that eliminating Washington’s health and safety community caretaking exception would leave fire fighters and EMS “in limbo as to when it would be appropriate to enter a home to render aid.” *WFC Brief* at 12. This assertion is not a legal basis to follow WFC’s position. As the Washington State Association of Prosecuting Attorney’s (“WAPA”) has functionally conceded, and as numerous other courts have concluded, as discussed in Washington Association of Criminal Defense Lawyer’s amicus brief, *SCOTUS* abrogated the community caretaking warrant exception with *Caniglia* thus eliminating the legality of WFC’s argument. Furthermore, this argument by WFC presumes that this Court would make a ruling without laying out guidelines for following the ruling.

Fourth, WFC’s argument that if this Court followed Petitioner’s argument it would have a “significant, negative” impact[] on public safety by limiting the provision of EMS in the State of Washington is without merit.

To be clear, Petitioner is not arguing that *Caniglia* eliminated the emergency aid exception to the warrant requirement nor that this Court should do so. Petitioner simply states the fact that post *Caniglia* there legally must be some form of judicial oversight to searches of the home that are not based on exigent circumstances.

Furthermore, this argument by WFC is nothing more than a red herring. This Court, and/or the legislature can set forth rules whereby EMS can enter the home with simple and quick judicial oversight that could easily have occurred in this case. These rules are necessary so that government actors are checked from what is currently almost unfettered access to the privacy of the home—something which disproportionately affects minority communities.

In sum, WFC's overall issue is a failure to understand what SCOTUS meant in *Caniglia* when SCOTUS stated that the Fourth Amendment does not prohibit all intrusions on private property, only unreasonable intrusions. *Caniglia* at 1599. WFC

apparently believes that if a state court makes a rule that defines some health and safety community caretaking searches as reasonable, this rule complies with *Caniglia*. This is an incorrect interpretation of *Caniglia* and constitutional law in general. *Caniglia*, by its clear language, defines generic community caretaking searches of the home as per se unreasonable. *Id* at 1598 (“The question today is whether *Cady*'s acknowledgment of these ‘caretaking’ duties creates a standalone doctrine that justifies warrantless searches and seizures in the home. It does not.”). Thus, it matters not what rule a state court makes defining what is “reasonable”, the rule violates the 4th Amendment if the rule allows for health and safety searches to be reasonable and to not require judicial oversight.

Therefore, the Court should reject WFC’s arguments as they ignore the clear language of *Caniglia*, misinterpret Petitioner’s arguments, and ignore the ability of this Court and the legislature to create a streamlined process whereby EMS would be able to quickly and lawfully enter a home.

2. WAPA fails to apply the elements of the rule it purports to support in claiming the search in this case was lawful.

As a starting point, it is difficult to determine precisely what WAPA’s argument is. WAPA concedes that community caretaking “may not always justify warrantless entry into the home”. *WAPA Brief* at 5. However, WAPA never clarifies under what circumstances WAPA believes community caretaking would justify entry into the home. WAPA then spends the majority of its argument asserting that emergencies are an exigent circumstance that generally justify entry without a warrant—something which does not contradict any of Petitioner’s arguments.

WAPA then proceeds to contradict itself within its own brief by first arguing that in *Boisselle* this Court noted the distinction between the emergency aid searches and health and safety searches (*WAPA Brief* at 17), then almost immediately argued that the *Boisselle* holding “is applicable only to emergency aid situation...”, and “did not create or condone... a

generalized community caretaking exception.” *WAPA Brief* at 19. This is a truly baffling contradiction considering *Boisselle* specifically laid out a test for a generalized community caretaking exception. *Boisselle* at 11-12.

Finally, following its approval of the *Boisselle* emergency aid test, WAPA argues that the facts of this case fit within the *Boisselle* emergency aid. *WAPA Brief* at 21. Conveniently, however, WAPA fails to actually conduct a *Boisselle* emergency aid test analysis prior to announcing WAPA’s belief in the legality of the search in this case. Had WAPA actually analyzed the *Boisselle* test in relation to the case at bar, WAPA would have been forced to admit that the facts here do not remotely fit within the *Boisselle* test for the emergency aid exception to the warrant requirement. *Boisselle* at 14.

Specifically, the first element is: “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.” Here, as Petitioner has

extensively documented, Deputy Black repeatedly testified that he had no idea where Ms. Teulilo was, nor if there was even anything wrong. Furthermore, when Deputy Black was outside the Teulilo home, he did not take the decisive action expected if he thought Ms. Teulilo required immediate protection or assistance, instead making calls to his supervisor to see what he should do. In fact, after Deputy Black's superior instructed Deputy Black to enter the home, he still did not immediately enter but made more phone calls prior to entry.

Thus, under the facts of this case, there is *no* evidence at all to support the proposition that Deputy Black subjectively believed that an emergency existed requiring that he provide immediate assistance to Peggy Teulilo. Significantly, WAPA cites no such evidence, apparently hoping this Court will ignore this detail.

WAPA then proceeds to ask this Court to send the case back down for further fact finding because the facts as elicited clearly demonstrate that this was an unlawful search.

This Court should decline WAPA's request, as the facts were extensively under witness examination and the State has not met its burden demonstrating that this was a lawful search.

E. CONCLUSION

Based on the argument outlined herein, Petitioner respectfully requests this Court vacate and reverse the decision of the trial court denying Petitioner's CrR 3.6 Motion to Suppress and order the case remanded for dismissal with prejudice.

Respectfully submitted this 30th day of December, 2022.

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/s/ Richard D. Gilliland
Richard D. Gilliland, WSBA #40474
Attorney for Petitioner

HALL AND GILLILAND PLLC

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Comments:

Sender Name: Richard Gilliland - Email: richard.gilliland@hallandgilliland.com
Address:
1111 W YAKIMA AVE STE A
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