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

STATE OF WASHINGTON,

Respondent,

v.

ULUI TEULILO,

Petitioner.

PETITIONER'S REPLY MEMORANDUM

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A. <u>TABLE OF AUTHORITIES</u>

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B. ARGUMENT

1. ***Respondent's arguments it it's Memorandum are without merit because every argument made by Respondent either: 1) attempts to portray persuasive authority as binding authority, 2) fails to address case law that undermines Respondent's arguments including Respondent's cited persuasive authority, and 3) supports the trial court's findings and conclusions with false representations of testimony.***

Respondent makes two basic assertions. First respondent asserts that *Caniglia v. Strom* does not eliminate the health and safety community caretaking function as applied to the home. 141 S.Ct. 1596, 209 L.Ed. 2d 604 (2021). Second, Respondent asserts that the court correctly found that there was an emergency which justified entry into Petitioner's home. Neither of these assertions are supported by the law or the facts of this case.

a. ***Respondent's argument that the "health and safety" community caretaking functions in the home are still authorized in Washington State pursuant to State v. Boisselle is without merit.***

Here, Respondent acknowledges that SCOTUS rejected a broad "freestanding community caretaking exception" to the warrant requirement, yet still argues, based on non-authoritative

concurring opinions is *Caniglia* that *Caniglia* is "limited to the facts of that particular situation" and the routine health and safety checks in the home are lawful. *Caniglia* at 1598; *Respondent's Memorandum* at 13 and 34.

This assertion by Respondent is completely without merit. In *Caniglia*, SCOTUS states:

> "Decades ago, this Court held that a warrantless search of an impounded vehicle for an unsecured firearm did not violate the Fourth Amendment. *Cady v. Dombrowski*, 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973). In reaching this conclusion, the Court observed that police officers who patrol the "public highways" are often called to discharge noncriminal "community caretaking functions," such as responding to disabled vehicles or investigating accidents. *Id.*, at 441, 93 S.Ct. 2523. **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.*"** (emphasis added)

Thus, Respondent is sorely mistaken. *Caniglia* eliminates the health and welfare community caretaking exception to the warrant requirement as applied to the home.

Not surprisingly, Respondent also fails to address subsequent SCOTUS case law to *Caniglia*, such as *Graham v. Barnette*, 970 F.3d 1075 (8th Circuit 2020), where SCOTUS vacated an 8th Circuit ruling upholding a community caretaking entry into a home without a warrant. *Graham v. Barnette*, 141 S.Ct. 2719 (Mem), 210 L.Ed.2d 881 (2021).

Similarly in *Sanders v. United States*, SCOTUS vacated and remanded in light of *Caniglia* another case of community caretaking being used as the basis to enter a home. 141 S.Ct. 1646 (Mem), 210 L.Ed.2d 867 (2021).

Thus, SCOTUS has summarily rejected the very community caretaking functions in the home Respondent maintains are still lawful.

In addition, it is significant to note that none of the concurrent opinions in *Caniglia* remotely address the situation faced in this case where, 1) a person did not show up to work for an unknown, but likely very short period of time, 2) the missing person had threatened to pack up and leave her husband, 3) the

police failed to request permission to enter from Petitioner whom they spoke to prior to entry, 4) the police failed to ask the homeowner to come back to check his home, and 5) the police failed to knock on the door of the neighbors home immediately next door to see if the missing person was at that residence prior to entering Petitioner's home. RP 12:11-15, 38:25-39:11, 40:11-13, 60:20-61:11, RP 13:17-19, 40:14-22, 40:20-41:4, 43:1-7, 51:23-52:3; CP 86.

Moreover, Respondent's argument that *Caniglia* does not overrule *Boisselle* when it comes to community caretaking is annihilated when reading *Boisselle*. *State v. Boisselle*, 194 Wn.2d 1, 448 P.3d 19 (2019). In *Boisselle*, the Washington State Supreme Court states, "Washington adopted the community caretaking exception recognized in *CADY* and expanded the exception to include 'not only the 'search and seizure' of automobiles, but also situations involving either emergency aid or routine checks on health and safety.'" *Boisselle* at 11; *Cady v. Dombrowski*, 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed.2d 706.

Thus, Washington's community caretaking exception is based on reasoning that SCOTUS rejected in *Caniglia*. *Caniglia* at 1598.

Therefore, contrary to Respondent's assertions, the search of Petitioner's home could not be based on a health and safety community caretaking search.

b. Respondent's arguments in support of the trial court's challenged findings of fact and conclusions of law are without merit as they are either based on made-up facts and/or misstatements of the law.

As previously discussed, health and safety community caretaking checks in a home are not lawful. Thus, the only possible basis for the search at issue here is the emergency aid exception to the warrant requirement. Petitioner will discuss Respondent's remaining arguments in reference to the trial court's findings of fact and conclusions of law in that light.

First, however, it is significant to note that SCOTUS cases on the emergency aid exception focus on serious and extreme circumstances. For example, in *Mincey v. Arizona*, SCOTUS

stated, “warrants are generally required to search a person's home or his person unless ‘the exigencies of the situation’ make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” 437 U.S. 385, 393–394, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978) (internal citations omitted). It is difficult to twist this statement into saying anything other than that warrants are always required unless the time constraints are so dire that a warrant would be impossible to get quickly enough as “[t]he need to protect or serve life or avoid serious injury” was imminent. *Id* at 403.

Second, Respondent’s argument is rife with internal contradiction. Specifically, Respondent asserts that Deputy Black’s search was an emergency, in no small part based on allegations of domestic violence thereby necessarily asserting that Ms. Teulilo was in need of emergency assistance due to a possible DV crime being committed against her. Thus, any search by Deputy Black would necessarily be a search to

investigate a crime, violating the first tenant of a community caretaking search which looks at "whether the community caretaking exception was used as a pretext for a criminal investigation." *State v. Boisselle*, 194 Wn.2d 1, 11, 448 P.3d 19 (2019).

Third, Respondent cannot meet its burden to meet the *Boisselle* elements for a lawful emergency aid search. The elements of the emergency aid test are:

> "(1) the officer subjectively believed that someone likely needed assistance for health or safety reasons; (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."

Boisselle at 12, citing *State v. Kinzy*, 141 Wn.2d 373, 386-7, 5 P.3d 668 (2000).

Here, assuming this is even a lawful test, which it likely is not considering it does not reference the emergency nature of the

required need, Respondent cannot meet its burden to meet these elements.

The first element is not even close. At no point did Deputy Black testify that he believed Ms. Teulilo was “likely in need of assistance”, or anything similar to this. In fact, the closest statement Respondent cites is Deputy Black’s statement that “something could have been wrong.” *Respondent’s Memorandum* at 18. The reality is, there was no evidence of anything aside from speculation based on a person not being where they were anticipated to be for a very short period of time.

Thus, Respondent cannot meet its burden as to the first element.

Similarly, Respondent cannot meet its burden as to the second element. No reasonable person would believe that a person was in need of aid in the Teulilo residence under these facts. As discussed extensive in Petitioner’s Opening Memorandum, Deputy Black repeatedly stated that he had “no idea” where Ms. Teulilo was, or if anything was wrong. If the

Deputy on scene felt that way, a reasonable person would almost certainly feel the same way—particularly when there was a neighbor's house 20-25 feet away where Ms. Teulilo could be located that had not been contacted. RP 13:17-19, 40:14-22, 40:20-41:4, 43:1-7, 51:23-52:3.

The third element is not met for the same reason. Deputy Black had "no idea" where Ms. Teulilo was and had not contacted the neighbor's house 20-25 feet away, so it was not reasonable to assume she was in her home in need of assistance.

Finally, after failing to meet the three elements, Respondent cannot meet the final test either—a showing by the State that the encounter was reasonable, based 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. As Respondent notes, "[w]hen weighing the public's interest, this Court must cautiously apply the community caretaking function exception because of the potential for abuse." *Kinzy*, 141 Wn.2d at 391.

What Respondent fails address is that this balancing test MUST necessarily include the additional extensive protections afforded the home as discussed extensively in Petitioner's Opening Memorandum. When considering these factors, Respondent cannot meet its burden considering, as previously discussed, this was a situation where: 1) a person did not show up to work for an unknown, but likely very short period of time, 2) the missing person had threatened to pack up and leave her husband, 3) the police failed to request permission to enter from Petitioner whom they spoke to prior to entry, 4) the police failed to ask the homeowner to come back to check his home, and 5) the police failed to knock on the door of the neighbor's home immediately next door to see if the missing person was at that residence prior to entering Petitioner's home. RP 12:11-15, 38:25-39:11, 40:11-13, 60:20-61:11, RP 13:17-19, 40:14-22, 40:20-41:4, 43:1-7, 51:23-52:3; CP 86.

Thus, the search was not reasonable and therefore unlawful.

After dispensing with Respondents general arguments, Petitioner will now address the more specific arguments made by Respondent in reference to the trial court's Findings of Fact and Conclusions of Law.

Finding of Fact 2.17:

Here, Petitioner simply asserts that the trial court exaggerated Deputy Black's concern. Respondent cites case law for the proposition that "[a]n officer's implied belief can be ascertained by words and actions." *Respondent Memorandum*, at 17. This law is apropos considering it is significant to note that Deputy Black did not enter the Teulilo residence until specifically ordered by his commanding officer. RP 22: 12-21, 26:1-11. Thus Deputy Black's words and actions demonstrated that he did not believe he should enter Petitioner's residence, he simply was following orders.

Finding of Fact 2.18:

Respondent's arguments here is curious and/or factually inaccurate. First, Respondent claims Deputy Black was

investigating a missing person and not a crime, yet the only explanation Respondent has for the missing person is a potential crime. Respondent can't have it both ways. Either he was investigating a crime, or he had no basis to believe there was an issue.

Second, despite Respondent's claim, Petitioner has never stipulated that Deputy Black was not investigating a crime. In fact, the facts of this case are clear that Deputy Black WAS investigating a crime. Otherwise, his actions are rather meaningless and completely devoid of explanation for entering the Teulilo residence.

Finding of Fact 2.19:

This Finding of Fact may be the most telling of this entire case. What it demonstrates is a complete and utter lack of respect for the law by Respondent. Essentially the trial court made a Finding of Fact that the Douglas County Sheriff's Department goes into people's homes pretty much whenever they feel like it and justify these intrusions by yelling "community caretaking"

from the mountaintops. Respondent's fight for this Finding of Fact demonstrates this point.

Conclusions of Law 3.1, 3.2:

Petitioner functionally addressed these issues in the preamble to these specific arguments.

Conclusion of Law 3.3:

Respondent supports the trial court's conclusion that "Dep. Black's belief that Peggy was likely inside the residence and likely in need of aid was subjectively and objectively reasonable under the totality of the circumstances" by simply saying it was correctly concluded. CP 90. Respondent fails to cite a single fact to support this position.

The reason for this failure is there are no facts to support this position. As Petitioner argued in his Opening Memorandum, Deputy Black did NOT subjectively believe it was likely that Ms. Teulilo was in the residence as he repeatedly testified that he had "no idea" where she was and NEVER testified that he thought it was likely she was there.

Thus, Respondent's argument is without merit.

Conclusions of Law 3.4:

Petitioner functionally addressed this issue in the preamble to these specific arguments.

Conclusion of Law 3.5:

While Petitioner functionally addressed this issue in the preamble to these specific arguments, it is important to note one thing from Respondent's Memorandum. Respondent claims the court heard Deputy Black testify that he was not investigating a crime and cites to page 33 of the Report of Proceedings. *Respondent's Memorandum* at 24. This, however, is not an accurate reflection of Deputy Black's statement taken in context. After being asked how what he was doing was different from a criminal investigation, Deputy Black stated "I was checking on her welfare. I had no idea – I had no idea if it was a crime, I was just trying to see if she was okay." RP 33.

Thus, Deputy Black did not say he was NOT investigating a crime, just that there was aspects of what he was doing that

were different from criminal investigation. Interestingly, a few questions later he began discussing prior alleged domestic incidents. In addition, as discussed ad nauseum, Deputy Black repeatedly stated that he had "no idea" what had happened, but also repeatedly discussed prior allegations of domestic violence as the potential basis for concern.

Again, Respondent can't have it both ways—yet neither leads to an admissible search. Either Deputy Black was investigating potential DV offenses—which would be the investigation of a crime and not a lawful basis for entry, or those alleged DV incidents were not a concern, and there was no legitimate basis at all for concern. In either circumstance the search was not lawful.

Conclusion of Law 3.6, 3.10 and 3.11:

Respondent incorrectly lumps Conclusion of Law 3.6 in with conclusion 3.10 and 3.11.

While Respondent's correctly state's Petitioner's argument for all three that if the first entry is unlawful, all other

entries are also unlawful, Petitioner additionally asserts that Deputy Black's second entry was not within the scope of his initial entry as he was specifically looking for something he did not see the first time—a gun. Moreover, looking for a gun certainly constitutes an intentional criminal investigation—which was an unlawful purpose as discussed by both parties extensively.

Conclusion of Law 3.7:

Petitioner functionally addressed this issue in the preamble to these specific arguments and in Respondent's previous arguments.

Conclusion of Law 3.8

Here, Respondent fails to even address the issue raised by Petitioner and is thus apparently conceding the point. Specifically, Respondent cites no facts, because there are none, that support the proposition that Deputy Black subjectively believed that Ms. Teulilo was in need of aid.

In fact, as previously discussed, the closest thing Respondent cites to support this proposition is Deputy Black's statement that "something could have been wrong." *Respondent's Memorandum* at 18. "Something could have been wrong" is not grounds to search a person's home under the guise of an emergency.

Conclusion of Law 3.9:

Respondent correctly concedes the lack of basis to Conclusion of Law 3.9 by failing to address it. This Conclusion of Law is a derivative of Finding of Fact 2.19 and again underscores the issue in this case. The Douglas County Sheriff's Office believes the law does not apply to it. The simple fact that people do things does not make those actions lawful.

Contrary to the trial court's assertion, ordinary people would not enter a private residence without checking to make sure the person was not at the neighbor's house 20-25 feet away.

Contrary to the trial court's assertion, ordinary people would not enter a private residence without at least asking the

permission of the homeowner when speaking to that person on the phone.

Contrary to the trial court's assertion, ordinary people would not enter a private residence without first asking the homeowner to come home and check themselves.

Contrary to the trial court's assertion, ordinary people would not enter a private residence based on a person being slightly late for work.

In sum, the Findings of Fact and Conclusions of Law challenged by Petitioner appear to be attempts to justify a blatantly bad search by distorting the facts and ignoring the law.

Therefore, they should be vacated, and all evidence suppressed as requested by Petitioner.

C. CONCLUSION

Based on the argument outlined herein, Petitioner respectfully requests this court vacate and reverse the decision of the trial court denying his CrR 3.6 Motion to Suppress.

Respectfully submitted this 31st day of August, 2022.

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