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 SUPPLEMENTAL MEMORANDUM

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2. The trial court erred in its August 11, 2021, order by ruling that the search in this case met the exigent circumstances of the emergency aid exception to the warrant requirement.

C. STATEMENT OF THE CASE

The following is an abbreviated Statement of the Case. Petitioner's full Statement of the Case is laid out in Petitioner's Opening Memorandum.

On July 25, 2018, at about 10:26 am, Okanogan County Sheriff's Department ("OCSD") Deputy Black was sent to Riverside Drive to conduct a welfare check. RP 6:4-5; 12:11-15; 13:2-4; 14:10-13.

At about 10:46 am, Deputy Black arrived at the Teulilo residence. RP 14:22.

Upon arrival, Deputy Black knocked on the side of the trailer and the door and received no answer. RP 16:19-17:13. He also announced "sheriff's office" several times and called out Peggy's name loud enough so that someone in the trailer could hear, but received no response. *Id.*

Deputy Black proceeded to call a number for Ms. Teulilo provided by Mr. Teulilo as well as other numbers he found associated with Ms. Teulilo on Spillman several times with no

response nor sound of a phone ringing from inside the Teulilo fifth wheel residence. RP 20:7-21:8; RP 20:17-22.

Deputy Black was ordered to check the door and announce "sheriff's office" by his supervisor. RP 22:12-21. Prior to checking the door, however, Deputy Black called Ms. Teulilo's number again with no response. RP 22:22-23:11.

Eventually, Deputy Black opened the door without entering, and announced "sheriff's office". RP 24: 24-25. There was no response and no sounds from the trailer. RP 25:10-13.

Deputy Black then called his supervisor who instructed Deputy Black to look around the residence make sure there was nothing amiss. RP 26:1-11. Prior to entering the residence, it had been about 30-40 minutes since Deputy Black received his call out. RP 37:19-38:7.

Deputy Black opened the door, again announced "sheriff's office" and entered the residence which was cluttered but tidy. RP 26:17-27:3. Upon looking down the hallway Deputy Black observed a deceased female. RP 27:23-28:3, 29:6-11.

Prior to entering the residence, Deputy Black had no idea what, if anything had happened to Ms. Teulilo. RP 32:20-22, 40:23-25, 41:1-12, 42:9-25, 47:20-25, 52:11-12. 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. RP 32:23-33:3; 36:5-9; 40:23-41:6, 42:9-25, 49:7-10, 49:15-19, 49:23-50:3, 50:11-13, 51:16-18, 51:19-52:12, 61:4-5. What Deputy Black did know was that if there had been someone in the residence, they would have heard his knocking and calling. RP 41:7-12, 46:24-47:3.

Moreover, prior to entering the residence, Deputy Black did not go to the neighbor's residence approximately 20-25 feet away and make any inquiries about Ms. Teulilo. RP 13:17-19, 40:14-22, 40:20-41:4, 43:1-7, 51:23-52:3.

D. ARGUMENT

The seminal case in the State of Washington discussing community caretaking and emergency aid searches is *State v. Boisselle.* 194 Wn.2d 1, 10, 448 P.3d 19 (2020). *Boisselle* relied on a legal premise that was eviscerated by SCOTUS in *Caniglia v. Strom*. 141 S.Ct. 1596, 1598, 209 L.Ed.2d 604, 21 Cal. Daily Op. Serv. 4474 (2021). Functionally this begs the question as to what remains of *Boisselle* post *Caniglia.*

While multiple other issues were addressed in Petitioner's prior memoranda, this Supplemental Memoranda will focus on only this issue.

1. Caniglia v. Strom eliminates Washington's health and safety community caretaking exception to the warrant requirement when applied to the home.

Under *Boisselle,* to determine if a community caretaking health and safety check in a home is lawful, Washington courts must first determine that the search was not pretextual. Next, Washington courts must determine if the search was reasonable. *Id.* "Where ... an encounter involves a routine check on health

and safety, its reasonableness depends upon a balancing of a citizen's privacy interest in freedom from police intrusion against the public's interest in having police perform a 'community caretaking function.' If the public's interest outweighs the citizen's privacy interest, the warrantless search was reasonable and was permissible under our state constitution." *Id* quoting *State v. Kinzy*, 141 Wn.2d 373, 388-9, 5 P.3d 668 (2000).

However, this portion of *Boisselle* is no longer good law following *Caniglia v. Strom*, which confirmed that these searches violate the Fourth Amendment. *Caniglia* at 1598.

In *Caniglia*, SCOTUS outlines and settles this issue in the very first paragraph of the decision by stating: "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* citing *Cady v. Dombrowski*, 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973).

The Court rams this point home in its conclusion by stating:

> *Cady*'s unmistakable distinction between vehicles and homes also places into proper context its reference to "community caretaking." This quote comes from a portion of the opinion explaining that the "frequency with which ... vehicle[s] can become disabled or involved in ... accident[s] on public highways" often requires police to perform noncriminal "community caretaking functions," such as providing aid to motorists. But, this recognition that police officers perform many civic tasks in modern society was just that—a recognition that these tasks exist, and not an open-ended license to perform them anywhere.
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> * * *
>
> What is reasonable for vehicles is different from what is reasonable for homes. *Cady* acknowledged as much, and this Court has repeatedly 'declined to expand the scope of ... exceptions to the warrant requirement to permit warrantless entry into the home.' We thus vacate the judgment below and remand for further proceedings consistent with this opinion."

Caniglia at 1599-1600, citing *Cady* at 441; quoting *Collins v. Virginia*, 138 S.Ct. 1663, 1672, 201 L.Ed.2d 9, 86 USLW 4324 (2018).

Thus, SCOTUS eliminated the health and safety community caretaking exception to the warrant requirement as

applied to the home. This fact is illustrated in multiple cases that have come out since *Caniglia.*

For example, in *Graham v. Barnette*, 970 F.3d 1075 (8th Circuit 2020), 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).

In addition, the 4th Circuit recently acknowledged the *Caniglia* holding by stating "the Supreme Court rejected the extension of the *Cady* community caretaking exception from searches of vehicles to searches and seizures in homes." *Torcivia v. Suffolk County, New York*, 17 F.4th 342 (2021).

The 6th Circuit also recently acknowledged the demise of the community caretaking exception in the home in *Clemons v.*

Couch, wherein the court stated, "Couch cannot justify his warrantless entry into Richard's home by calling on the community-caretaking exception." 3 F.4th 897. The court continued, stating "[w]e now know, based on *Caniglia*, that the community-caretaker exception, to the extent it exists at all, does not apply to the home. *Id.*

Thus there is no longer a health and safety community caretaking exception to the warrant requirement as applied to the home.

Moreover, in comparison to the federal constitution, "article I, section 7 affords greater protection from an officer's search of a home than the Fourth Amendment." *State v. Johnson* 104 Wn.App. 409, 415 (2001) citing *State v. Ferrier,* 136 Wash.2d 103, 111–13, 960 P.2d 927 (1998). Thus, Washington State privacy protections are even greater than the protections confirmed by SCOTUS in *Caniglia.*

Therefore, this Court must reverse *Boisselle* insofar as it was functionally overruled by *Caniglia.*

Furthermore, this Court should modify the emergency aid elements as to the home as discussed herein so as to comply with *Caniglia* and the added protections of the home under the Fourth Amendment and Article 1 Sections 7 of the Washington State Constitution.

2. Caniglia v. Strom does not eliminate the need to render emergency aid as an exigent circumstance to the warrant requirement.

While *Caniglia* clearly eliminates Washington's health and safety exception community caretaking to the warrant requirement when applied to the home, SCOTUS did not eliminate emergency aid as an exigent circumstance allowing entry into a home. As the Court stated in *Caniglia*, "[w]e have also held that law enforcement officers may enter private property without a warrant when certain exigent circumstances exist, including the need to 'render emergency assistance to an injured occupant or to protect an occupant from imminent

injury.'" *Caniglia v. Strom*, 141 S.Ct. 1596, 1599, *quoting Kentucky v. King*, 563 U.S. 452, 460, 470, 131 S.Ct. 1849, 179 L.Ed.2d 865 (2011).

Thus, what Washington State courts refer to as the emergency aid prong of the community caretaking exception is still a valid exception to the warrant requirement post *Caniglia,* and as limited by *Caniglia*. The question is whether Washington's test, as outlined in *Boisselle*, survives *Caniglia*. 194 Wn.2d 1, 12, 448 P.3d 19.

Considering the extra protections afforded the home (as discussed extensively in Petitioner's previous memoranda) under both Washington State and SCOTUS case law and the greater protection provided by Article 1, section 7 from searches than does the Fourth Amendment. *State v. Johnson* 104 Wn.App. 409, 415 (2001) citing *State v. Ferrier*, 136 Wn.2d at 111.

In *Boisselle*, this Court outlined the 3-part test for determining whether the emergency aid function of the community caretaking exception applies. *Id* at 12. Specifically,

under *Boisselle* the emergency aid exception to the warrant requirement applies when "(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* at 14.

What this Court did not do, was delineate any difference between the emergency aid warrant exception in general, as opposed to the emergency aid exception in the home. Considering the extensive case law about the added protections to the home (as discussed in Petitioner's prior memoranda), and the clear difference between the home and other locations as outlined in *Caniglia*, Petitioner believes there should be a difference between the general rule, and the rule for the home. *Id* at 1600. As SCOTUS stated, "[w]hat is reasonable for vehicles is different from what is reasonable for

homes. *Cady* acknowledged as much, and this Court has repeatedly "declined to expand the scope of ... exceptions to the warrant requirement to permit warrantless entry into the home." *Caniglia* at 12, quoting *Collins v. Virginia*, 138 S.Ct. at 1772; *Cady v. Dombrowski*, 413 U.S. 433.

In addition, it is important to note *Caniglia's* specific reference to *Kentucky v. King*, as previously discussed, for the proposition that "law enforcement officers may enter private property without a warrant when certain exigent circumstances exist, including the need to 'render emergency assistance to an injured occupant or to protect an occupant from imminent injury.'" *Caniglia* at1599, *quoting King*, 563 U.S. at 460.

Considering the issue is the location being searched, and SCOTUS case law, Petitioner believes this Court must modify the last two prongs of the emergency aid exception as applied to homes. Specifically, Petitioner proposes that the test be modified to read as follows: (2) a reasonable person in the same situation would similarly believe that an emergency existed requiring that

he or she provide immediate assistance to protect or preserve life or property, or to prevent serious injury, and (3) the home at issue was the most likely location that emergency assistance or protection from imminent injury was needed after checking other reasonable locations as was possible under the totality of the circumstances.

This rule would not unduly burden law enforcement, while at the same time forbidding the carte blanche ability to search that Police Officers, as in this case, appear to believe they possess under the current doctrine.

3. The facts of this case do not meet Petitioner's proposed rule, nor the State v. Boisselle elements necessary for rendering emergency aid.

Here, there is little argument that Deputy Black's search of the Teulilo residence does not meet even the current *Boisselle* emergency aid elements. 194 Wn.2d at 12. While Petitioner has covered this in more detail in previous memoranda, Petitioner will briefly address the emergency aid elements from *Boisselle* here.

The first element, as stated in *Boisselle*, is not met here. After arriving at the Teulilo residence, Deputy Black's actions, as outlined in Petitioner's Statement of the case from his Opening Memorandum, were not the actions of a person who believed there was an emergency. In addition, Deputy Black repeatedly testified that he had no idea if there was anything wrong with Ms. Teulilo and that he had no idea where she was. RP 32:20-22, 40:23-25, 41:1-12, 42:9-25, 47:20-25, 52:11-12. Thus, Deputy Black did not subjectively believe that "an emergency existed requiring that he or she provide immediate assistance to protect or preserve life or property, or to prevent serious injury".

In addition, as to the second prong, considering the facts presented to Deputy Black (as outlined in Petitioner's Opening Memorandum's Statement of the Case and discussed below), and considering Deputy Black did not even bother checking the neighboring residence 20-25 feet away prior to entry, no reasonable person would believe that there was a need for assistance.

Finally, there was not a reasonable basis to associate the need for assistance with the place searched. Reasonableness must require at least making minimal efforts to determine if a location is correct. Here, Deputy Black knocked on the trailer door upon arrival and announced "sheriff's office" without response. RP 16:19-17:13. Deputy Black called Ms. Teulilo with no response nor sound of a ringing phone. RP 20:7-21:8; RP 20:17-22. Deputy Black then opened the front door, observed nothing visible inside appeared out of order and again announced "sheriff's office" without response. RP 22:12-21. When these facts are combined with the fact that there was another residence 20-25 feet away from the Teulilo residence at which Deputy Black made no inquires, there was no reasonable basis to associate the Teulilo residence with the need for assistance.

Therefore, even under the emergency aid prong as currently outlined in *Boisselle*, the search of the Teulilo residence was unlawful.

E. 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 and order the case remanded for dismissal with prejudice.

Respectfully submitted this 23rd day of November, 2022.

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