COURT OF APPEALS
DECISION
DATED AND FILED

December 23, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP108-CR **Cir. Ct. No. 2012CF81**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHARLES V. MATALONIS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Kenosha County: WILBUR W. WARREN III, Judge. *Reversed and cause remanded with directions.*

Before Blanchard, P.J., Higginbotham and Sherman, JJ.

¶1 SHERMAN, J. Charles V. Matalonis appeals from a judgment of conviction for one count of manufacturing or delivering tetrahydrocannabinol (THC), contrary to WIS. STAT. § 961.41(1)(h)1. Matalonis argues the circuit court

erred in denying his motion to suppress evidence obtained after police officers searched his home without a warrant and without his consent. The circuit court denied the motion, concluding that the search was justified under the community caretaker exception to the general rule that warrantless searches and seizures violate the Fourth Amendment to the United States Constitution. We disagree and, therefore, reverse the court's denial of Matalonis's motion to suppress and remand for further proceedings.

BACKGROUND

¶2 In January 2012, Matalonis was charged with one count each of possession of drug paraphernalia, possession of THC, and manufacture or delivery of THC. Matalonis moved the circuit court to suppress all evidence seized during the search of his residence, which Matalonis alleged was unlawful because it was undertaken without a warrant and without his consent.

¶3 At the hearing on Matalonis's motion to suppress, testimony was given by Kenosha Police Officers Brian Ruha and David Yandel. Officer Ruha testified that in the early morning of January 15, 2012, he was dispatched for a medical call at a residence located on 45th Street in Kenosha. Officer Ruha testified that when he arrived at the residence, he made contact with Antony Matalonis, Matalonis's brother, whom he described as appearing "highly intoxicated" and "battered … his whole right side of his body was covered in blood." Officer Ruha testified that Antony stated that he had been "beat up by four different groups of people" outside a bar, but then later stated that he had been beat up "by four people" outside the bar.

¶4 Officer Ruha testified that after Antony was transported to the hospital by ambulance, he looked outside for blood in order to ascertain where the

victim had come from. Officer Ruha testified that there was snow on the ground and that he was able to follow a trail of blood splatters from the residence on 45th Street to the side door of a residence located on Fifth Avenue. Officer Ruha testified that when he reached the residence on Fifth Avenue, he heard two unidentified "loud bangs coming from inside." Officer Ruha testified that he and Officer Yandel knocked on the door, which was answered by Matalonis, who was out of breath, but did not appear to be injured. Officer Ruha testified that he and Officer Yandel informed Matalonis that they had found an injured individual a few houses away, that they had followed a blood trail to Matalonis's residence, and that they needed to enter the residence to make sure that no one was injured inside. Officer Ruha testified that Matalonis stated that he had gotten into a fight with his brother and that he lived alone.

¶5 Officer Ruha testified Matalonis let him and Officer Yandel into his home and that upon entering the residence, he "conducted a protective sweep … to make sure that no one else was inside the house or even injured … [who] needed medical attention." Officer Ruha testified that he "checked the lower level of the house" where he located "a couple drops of blood" in the living room and "another couple drops of blood" in the kitchen. Officer Ruha testified that he looked in the basement, but did not locate any blood down there. He then went to the stairs leading to the second level of the house, where he observed "what appeared to be droplets of blood on the carpet and blood smeared all along the wall leading upstairs." Officer Ruha testified that he climbed the stairs to the second level where he observed "blood all over the handrail" and glass shards from a broken mirror on the floor. Officer Ruha testified that upstairs in a living area at the top of the stairs, he observed "various pipes and other smoking utensils used for smoking marijuana." Officer Ruha also testified that he observed a door secured

with a deadbolt with "blood splatters" on it. Officer Ruha testified on cross-examination that he also observed the smell of marijuana and the sound of a fan coming from the locked room.

¶6 Officer Ruha testified that he continued past the locked door into the bathroom to ensure that no one was in the bathroom, that he observed a "water bong" in the bathroom, and that he returned to the first level of the house where he asked Matalonis where the key to the locked door was. Officer Ruha testified that he informed Matalonis that he needed to ensure that no one was injured inside the locked room and that if Matalonis did not provide him with the key to the room, he was going to kick the door in. Officer Ruha testified that Matalonis informed him that the room was full of security cameras for his house. Officer Ruha testified that he again asked Matalonis for the key to the room, at which point Matalonis informed him that he had marijuana plants growing inside the locked room. Officer Ruha testified that he obtained the key and that upon entering the room, he found a large marijuana plant growing.

¶7 Officer Ruha testified that Matalonis admitted that the marijuana plant was his, but refused to talk about it further. Officer Ruha testified that he then asked Matalonis about his fight with Antony, at which point Matalonis described in more detail what happened with Antony.

¶8 Officer Yandel testified that he arrived at the residence on 45th Street when Antony was being loaded into an ambulance. Officer Yandel described Antony as having blood on his face and shirt and looking "pretty beat up." Officer Yandel testified that he noticed a "large amount of blood" on the stairwell leading to the residence and that he and Officer Ruha checked the surrounding area to determine where the blood originated from. He testified that

they located a trail of blood, which they followed to Matalonis's residence on Fifth Avenue. Officer Yandel testified that when Matalonis opened his door, he observed blood on the foyer floor and blood near the stairwell. Officer Yandel testified that he informed Matalonis that they had followed a trail of blood to his residence and that Matalonis explained that he had been in a fight with his brother and that his brother had left. Officer Yandel testified that he informed Matalonis that because there was blood in the house, the officers wanted to make sure that no one else was injured. Officer Yandel testified that Matalonis let them inside his home and that Officer Ruha conducted the search of the residence while he remained with Matalonis on the first floor.

¶9 The circuit court denied Matalonis's motion to suppress, concluding that the warrantless search was justified under the community caretaker exception to the warrant requirement. Following the denial of his motion to suppress, Matalonis pled no contest to the manufacture or delivery of THC. Matalonis appeals.

DISCUSSION

¶10 Matalonis contends that the warrantless search of his home was unconstitutional and that any evidence obtained from the search should have been suppressed by the circuit court. The State contends that the circuit court properly denied Matalonis's motion to suppress because the search was undertaken under the community caretaker exception to the warrant requirement because officers reasonably believed that someone was possibly injured inside Matalonis's residence or, alternatively, the search constituted a lawful protective sweep.

A. Standard of Review

¶11 Our review of the circuit court's ruling on Matalonis's motion to suppress is two-fold. We will uphold the court's factual findings unless those findings are clearly erroneous. ***State v. Sykes***, 2005 WI 48, ¶12, 279 Wis. 2d 742, 695 N.W.2d 277. The application of constitutional principles to those facts is reviewed de novo. ***Id.***

B. Community Caretaker Exception

¶12 Subject to a few well-delineated exceptions, warrantless searches are considered presumptively unreasonable and violate both the Fourth Amendment to the United States Constitution and the Wisconsin Constitution. *See* U.S. CONST. amend. IV; WIS. CONST. art. I, § 11; and ***State v. Pinkard***, 2010 WI 81, ¶13, 327 Wis. 2d 346, 785 N.W.2d 592. One exception to this presumptive rule exists when police are performing their community caretaker function for members of the public who need assistance. ***State v. Kramer***, 2009 WI 14, ¶¶17, 32, 315 Wis. 2d 414, 759 N.W.2d 598. In order for a warrantless home entry to be justified under the community caretaker exception, the following must be true: (1) a search or seizure within the meaning of the Fourth Amendment occurred; (2) the police were acting under a bona fide community caretaker function; and (3) the public interest outweighs the intrusion upon the privacy of the defendant such that the community caretaker function was reasonably exercised within the context of the home. ***Pinkard***, 327 Wis. 2d 346, ¶29. The burden lies with the State to establish the applicability of the exception. *See* ***State v. Leutenegger***, 2004 WI App 127, ¶12, 275 Wis. 2d 512, 685 N.W.2d 536.

¶13 Both Matalonis and the State agree that the officers' initial entry into Matalonis's residence was lawful. The dispute in this case centers on whether,

after entering Matalonis's home and speaking with Matalonis, officers were justified in conducting a search of the residence. We apply the three-part community caretaker exception test below.

1. Existence of Search

¶14 The parties do not dispute, and we agree, that a search of Matalonis's home within the meaning of the Fourth Amendment occurred. Accordingly, the first requirement of the three-part test is met.

2. Bona Fide Community Caretaker

¶15 The second requirement is that the police were engaged in a bona fide community caretaker function. To satisfy this requirement, there must have been "an 'objectively reasonable basis' to believe there [was] 'a member of the public who [was] in need of assistance.'" ***State v. Ultsch***, 2011 WI App 17, ¶15, 331 Wis. 2d 242, 793 N.W.2d 505 (quoted source omitted). In analyzing the second requirement, "we look at the totality of the circumstances at the time" the search was conducted. ***State v. Gracia***, 2013 WI 15, ¶17, 345 Wis. 2d 488, 826 N.W.2d 87. Because the second factor is determined on a case-by-case basis, it is helpful to review some of the cases addressing this issue.

¶16 In two recent cases in which the community caretaker exception was at issue where officers entered a residence without a warrant, the supreme court determined that the officers were acting in a bona fide caretaker function. *See* ***Pinkard***, 327 Wis. 2d 346, and ***Gracia***, 345 Wis. 2d 488.

¶17 In ***Pinkard***, officers entered a residence while acting on an anonymous tip that two individuals appeared to be sleeping in a room with cocaine, money and a digital scale, while the door to the residence was open.

Pinkard, 327 Wis. 2d 346, ¶2. Prior to entering the residence, the officers knocked on the open door and announced their presence. ***Id.***, ¶3. The officers did not receive a response and, after waiting approximately thirty to forty-five seconds, entered the residence to "'check the welfare of the occupants.'" ***Id.***, ¶4. The supreme court characterized the situation as a "close case," but reasoned that with the door to the residence open and the occupants unresponsive to the officers' announcement of their presence, the occupants could have been the victims of a crime or suffering from an overdose. ***Id.***, ¶¶33, 35.

¶18 In ***Gracia***, officers were investigating an automobile accident in which a vehicle had hit a traffic signal, knocking it down. ***Gracia***, 345 Wis. 2d 488, ¶¶6-8. During their investigation, the officers discovered a "mangled" license plate lying next to the traffic signal and eventually a vehicle belonging to Gracia that had "clearly been in an accident" and was missing its license plate parked in front of Gracia's residence. ***Id.***, ¶¶6-7. When the officers attempted to make contact with Gracia at his residence, however, no one answered the door. ***Id.***, ¶8. Gracia's brother then arrived on the scene and was informed by the officers that they were concerned that Gracia was potentially injured. ***Id.*** Gracia's brother attempted to make contact with Gracia, who had locked himself in his bedroom; however, Gracia refused to open the door. ***Id.*** Gracia's brother then forced the door open and officers entered Gracia's room. ***Id.*** In concluding that officers had an objectively reasonable basis to believe that Gracia was in need of assistance, the supreme court emphasized the severity of the car accident—the light signal had been completely knocked down and Gracia's vehicle had sustained "extensive" damage, that the officers had "consistently stated their concern for Gracia," and that Gracia's brother also appeared to be concerned for Gracia's safety. ***Id.***, ¶¶21-22.

¶19 In contrast to ***Pinkard*** and ***Gracia***, we determined in ***Ultsch***, 331 Wis. 2d 242, and in ***State v. Maddix***, 2013 WI App 64, 348 Wis. 2d 179, 831 N.W.2d 778, that officers did not have objectively reasonable bases to believe that someone was in need of assistance and thus were not engaged in a community caretaker function when they entered the defendants' homes.

¶20 In ***Ultsch***, officers were investigating an automobile accident in which the driver hit a brick wall and left the scene in her vehicle. ***Ultsch***, 331 Wis. 2d 242, ¶2. The officers found the unoccupied vehicle at the end of a driveway. ***Id.*** As officers were looking at the vehicle, another vehicle came down the driveway and its driver informed the officers that the damaged vehicle belonged to his girlfriend and that she was in the house ""possibly in bed or asleep.'" ***Id.***, ¶3. After Ultsch's boyfriend left, the officers knocked on the door to the house, but received no response. ***Id.***, ¶4. The officers then tried the door knob and after discovering that the door was unlocked, they entered the residence and found Ultsch asleep in a bedroom. ***Id.,*** ¶4. In concluding that the officers did not have a reasonable basis to believe that Ultsch was in need of assistance, we reasoned that the officers did not have any information indicating that Ultsch was in a vulnerable situation or was injured. ***Id.***, ¶20. We stressed that the damage to Ultsch's vehicle was not such to give rise to a concern for Ultsch's safety. ***Id.***, ¶19. We also stressed that officers did not ask Ultsch's boyfriend about her condition, the boyfriend did not indicate that Ultsch needed assistance, and the officers did not observe any blood between Ultsch's car and her residence. ***Id.***, ¶¶20-21.

¶21 In ***Maddix***, officers responded to a call reporting a domestic disturbance and heard screams upon their arrival. ***Maddix***, 348 Wis. 2d 179, ¶26. When the officers entered the apartment, they encountered Maddix and Maddix's

girlfriend, who appeared to be the only people in the apartment. ***Id.*** Both Maddix and his girlfriend told the officers that they had been fighting about their relationship and the girlfriend told the officers that she had screamed because she was scared, but that she didn't know what she had been scared of. ***Id.*** The officers were not satisfied with the girlfriend's explanation about her scream and believed that another individual was in the apartment who either caused the female to scream or was a victim. ***Id.*** We stated in ***Maddix*** that unlike ***Pinkard***, ***Gracia***, and even ***Ultsch***, there was no evidence pointing "concretely to the possibility that a member of the public was in need of assistance." ***Id.***, ¶27. We stated that although it was possible a third individual was in the apartment, "there were no objectively reasonable grounds to suspect that the disturbance involved persons other than Maddix and his girlfriend." ***Id.***, ¶27.

¶22 In the present case, the State asserts that Officers Ruha and Yandel had a reasonable basis to believe that someone may have been injured inside Matalonis's home in light of the injuries sustained by Matalonis's brother, Matalonis's brother's claim that he had been assaulted by multiple people, the trail of blood leading from where the officers found Matalonis's brother to Matalonis's residence, the two loud bangs heard by the officers when they approached Matalonis's residence, and the officers' observation of blood splatters inside Matalonis's residence. However, when we compare the facts at hand with those in ***Pinkard***, ***Gracia***, ***Ultsch*** and ***Maddix***, we conclude that the officers did not have an objectively reasonable basis to believe that anyone was injured inside the home.

¶23 The officers responded to a call that someone was in need of medical assistance. When they arrived, they found Matalonis's brother, who they described as appearing intoxicated and who had sustained injuries significant enough to warrant transport by ambulance to the hospital. Matalonis's brother

informed the officers that he had been beat up at a bar by either four groups of individuals or by four people. The officers followed the trail of blood to Matalonis's residence primarily to determine where Matalonis's brother had come from. When the officers arrived at Matalonis's residence they heard two "loud bangs" coming from inside. Once inside the residence, the officers observed blood in the foyer and near the stairs, and they were informed by Matalonis that he and his brother had gotten into a fight, that his brother had left and that he lived alone.

¶24 In ***Pinkard*** and ***Gracia***, the officers had specific concerns about the welfare of people known to be present in the homes when the officers entered the homes. However, the present case is more similar to ***Maddix*** in that the officers in this case did not have before them any evidence pointing "concretely to the possibility that a member of the public was in need of assistance" inside Matalonis's home. ***Id.***, ¶27. Matalonis's brother informed the officers that he had been beat up, but he did not give any indication that any other individuals had been harmed in the fight. Furthermore, although Matalonis's brother informed officers that he had been beat up by multiple people, his story was inconsistent and the location of the fight indicated by Matalonis's brother was not consistent with the officers' investigation. When the officers spoke with Matalonis, Matalonis informed the officers that he and his brother had gotten into a fight, which explained the blood observed by the officers inside the residence, and that his brother had left, which explained the trail of blood followed by the officers to Matalonis's home. Although there are conflicting versions of how Matalonis's brother sustained his injuries, in no version is there reference to any other person being injured.

¶25 The State asserts that the officers "were [] not required to conclude that only [Matalonis's brother] had been injured" and that it was reasonable for them to believe that another injured person was inside Matalonis's home. However, the absence of contrary evidence alone does not provide an objectively reasonable basis. Although it is possible, on the lower end of the possibility spectrum, that another person was injured inside Matalonis's residence, applying the objective standard in this case, we conclude that the evidence known to the officers did not provide an "objectively reasonable basis" to believe that a member of the public was in need of assistance. A mere possibility that another person may be injured without any other evidence that concretely points to the possibility that a member of the public required assistance does not meet the more demanding objective reasonable basis standard. *See* ***Ultsch***, 331 Wis. 2d 242, ¶15.

¶26 The State argues in the alternative that even if the officers did not have an objectively reasonable basis to believe that someone was injured inside Matalonis's residence after they entered the home, the search constituted a lawful protective sweep.

¶27 We have explained that "[w]hen officers enter a residence pursuant to the community caretaker exception, they may also undertake a protective sweep when they reasonably believe, under the totality of the circumstances, that such a search is necessary to assure the safety of the officers and others." ***Maddix***, 348 Wis. 2d 179, ¶15.

¶28 The State argues that the officers could reasonably have believed that a search of Matalonis's residence was necessary to assure their safety in light of the seriousness of the injuries sustained by Antony and Antony's claim that he had been beat up by multiple people. We disagree.

¶29 When the search was conducted, the officers knew that Antony's description of the fight was inconsistent and inaccurate. As indicated above, Antony inconsistently claimed that he was attacked by four groups of people and by four people. He also claimed that the fight occurred at a bar; however, the officers' investigation led them to Matalonis's residence. When the officers spoke with Matalonis, Matalonis informed the officers that he and Antony had gotten into a fight, that Antony had left, and that he lived alone. Although it is certainly possible that other individuals were involved in the fight and were in Matalonis's residence, there were no reasonable grounds to suspect that to be the case. Applying the objective standard, we conclude that the evidence before the officers did not provide an objectively reasonable basis for the officers to believe their safety was at risk.

¶30 Accordingly, for the reasons discussed above, we conclude that there was not an objectively reasonable basis to believe that someone was in need of assistance inside Matalonis's residence or that the officers' safety was at risk and, therefore, the search did not constitute a lawful protective sweep.

3. Public Interest Versus Intrusion Upon Privacy

¶31 Even if we had determined that the police were exercising a bona fide community caretaker function when they searched Matalonis's residence, the entry would not fall within the community caretaker exception because it fails under the third inquiry—"whether the public interest outweighs the intrusion upon the privacy of the individual such that the community caretaker function was reasonably exercised within the context of a home." ***Pinkard***, 327 Wis. 2d 346, ¶29. To make this determination, we "balance the public interest or need that is furthered by the officers' conduct against the degree and nature of the

intrusion on the citizen's constitutional interest." ***Id.***, ¶41. We consider the following four factors in balancing these interests:

> "(1) the degree of the public interest and the exigency of the situation; (2) the attendant circumstances surrounding the [search], including time, location, the degree of overt authority and force displayed; (3) whether an automobile is involved; and (4) the availability, feasibility and effectiveness of alternatives to the type of intrusion actually accomplished."

Id., ¶42 (quoted source omitted).

¶32 Examining the first factor, the degree of the public's interest and the exigency of the situation, this case is more similar to ***Maddix*** and ***Ultsch*** than it is to ***Pinkard*** or ***Gracia.*** The officers in this case responded to a medical call at a residence and followed a trail of blood from that residence to Matalonis's home. There, officers were informed that Matalonis and his brother had gotten into a fight and that his brother had left. In ***Pinkard***, the officers had information that the door was open and the occupants were apparently vulnerable, and in ***Gracia*** the officers observed significant damage to a vehicle and Gracia's brother expressed concern for Gracia's safety, the facts in this case do not point to the likelihood of hidden injury or danger. Here, however, as in ***Maddix*** and ***Ultsch***, nobody expressed concern for the welfare of another individual. We acknowledge that the officers in this case observed blood in the foyer and near the stairwell in Matalonis's residence when Matalonis opened the door to the officers. However, there was no objectively reasonable basis to believe that the blood belonged to anyone other than Matalonis's brother, whose blood trail they had just followed to that location. Even if that initial observation had been sufficient to lead the officers to believe that the situation was exigent, the exigent nature of the situation diminished significantly once the officers were informed by Matalonis that he had

been involved in a fight with his brother and that his brother had left. Additionally, as in ***Maddix***, by the time the officers reached the locked door, which at best revealed only very minor streaks of blood on the door's surface and on the doorknob, a reasonable officer would have suspected that Matalonis was the only person in the residence. The slightly blood-streaked door and doorknob do not support an objective suspicion that an injured person may be in the room with the locked door.

¶33 The second factor is the attendant circumstances. "These include the time, location, and the degree of overt force and authority displayed." ***Ultsch***, 331 Wis. 2d 242, ¶26. Although the officers did not control the time or location, the degree of authority and force displayed by the officers in this case was considerable. Officer Ruha conducted a warrantless search of Matalonis's residence without Matalonis's consent, which the supreme court has described as "more suspect" than other warrantless entries, Matalonis was detained in his living room with Officer Yandel, and Officer Ruha threatened to break down the locked door on the second floor if a key to the door was not provided. *See* ***Pinkard***, 327 Wis. 2d 346, ¶20.

¶34 The third factor, whether the search took place in an automobile, does not apply in this case because the search took place in a residence. *See* ***Gracia***, 345 Wis. 2d 488, ¶27 ("[t]he third factor is irrelevant because the search was not of an automobile").

¶35 The fourth and final factor evaluates the alternatives that were available to the action taken. We conclude that this factor does not weigh strongly in either direction. The primary alternative available to the officers in this case was to ask Matalonis whether there was anyone injured (or uninjured) in his home.

As we observed in ***Maddix***, the officers "would not have been required to accept at face value" Matalonis's answer to that question. ***Maddix***, 348 Wis. 2d 179, ¶36. However, the officers could have questioned Matalonis further on the topic. "It is relevant to the overall question of reasonableness that the officers looked for people … without consent, apparently without first asking … whether anyone else might be there" and after Matalonis had told officers that he lived alone. ***Id.***

¶36 Having reviewed each of the four factors, we conclude that in this case, the public's interest in the intrusion was minimal and that it did not outweigh the substantial intrusion upon Matalonis's privacy interest in his home.

CONCLUSION

¶37 For the reasons discussed above, we conclude that the officers' search in this case did not fall within the community caretaker exception to a warrantless search. Accordingly, we reverse the circuit court's judgment of conviction and order denying Matalonis's motion to suppress, and remand for the circuit court to suppress evidence resulting from the warrantless search.

By the Court.—Judgment reversed and cause remanded with directions.

Not recommended for publication in the official reports.

¶38 BLANCHARD, P.J. (*dissenting*). I would affirm, because I conclude: (1) based on the circumstances as they unfolded, which included at least one seriously injured person and conflicting accounts of how that person became injured, the officers had an objectively reasonable basis to believe that a warrantless, unconsented search of the residence for other injured persons, including the search behind a locked door with blood droplets on it, was necessary to address a serious safety concern; and (2) the public interest in the search outweighed the intrusions on Matalonis's privacy. That is, applying the principles set forth in the case law cited by the majority, I believe that the State carried its burden to demonstrate that the officers had an objectively reasonable basis to act as community caretakers through the search.[1] Accordingly, I respectfully dissent.

¶39 Unlike the majority, I see the similarities between the facts here and those in ***State v. Maddix***, 2013 WI App 64, 348 Wis. 2d 179, 831 N.W.2d 778, as being mostly superficial and the differences as being significant. In my view, the following significant differences between the facts of the two cases support the circuit court's decision here to deny the motion to suppress:

- *Evident acts of physical violence?* In ***Maddix***, officers responding to a domestic disturbance call were presented with what was by all appearances a loud verbal dispute between two persons, with no signs of violence. ***Id.***, ¶¶2-10, 28-29.

  In contrast, in this case, officers responding to a medical call were presented with what by all appearances was an incident involving

[1] I do not address the alternative basis to affirm argued by the State, which relies on the protective sweep doctrine.

recent, serious physical violence. Matalonis's heavily bloodied brother, Antony, was taken away in an ambulance.

- *Conflicting accounts of the violence?* In ***Maddix***, both interviewees gave statements that were apparently not only internally consistent but also consistent with each other, to the effect that nothing violent was afoot, and the incident involved only an argument between the two of them. The two witnesses appeared to account for all pertinent evidence, such as who in the apartment had screamed within hearing of the officers. ***Id.***, ¶¶5-6, 29.

  Here, officers were given two sharply contrasting versions of what the violence had involved. The first witness interviewed told police that he had received his injuries at the hands of a group of individuals, while Matalonis said that only the two of them had fought.

- *Consented entry to residence?* In ***Maddix***, officers forced open a locked back door of Maddix's two-flat house, and, when Maddix responded to a knock on the door of his unit, grabbed his arm and ordered him to "stay right there." ***Id.***, ¶4.

  Here, Matalonis does not challenge the circuit court finding that Matalonis consented to the officers entering the house.

- *Timing?* In ***Maddix***, we concluded that it was significant that "the officers were present in the apartment for twenty-five to thirty minutes prior to initiating the search of the rooms in the apartment." ***Id.***, ¶¶28, 33.

  Here, Matalonis does not challenge the circuit court finding that one of the officers conducted an immediate, brief search of the rooms of the house for any injured person, focusing only on locations where blood suggested that a person might be found.

- *Evidence of an unknown, potentially injured person?* In ***Maddix***, there was nothing to suggest that any person was in the room searched, and there was "virtually no" evidence that any person other than Maddix and the female might be located anywhere in the apartment. *See* ***id.***, ¶¶8, 28. We explained in ***Maddix*** that the "primary basis" for the search there was that the officers were "'not satisfied' with the female's explanation as to why she screamed," but there was nothing about her screaming, nor any other evidence, to suggest that any third party might have been involved in the incident. ***Id.***, ¶¶18, 26-30. Put differently, there was no

> evidence supporting a suspicion that the inadequately explained scream involved any persons other than the female and Maddix.
>
> Here, officers were given one account that the violence involved five or more persons. Officers then observed blood at the residence and, as the search progressed, physical evidence pointing to the reasonable possibility of an injured person behind the locked door: blood smeared along the wall leading upstairs and on the handrail; a broken mirror, seeming to confirm violence occurring within the house; and blood droplets on the door of a second floor room, which was locked.

¶40 This last point of difference between ***Maddix*** and the instant case is particularly significant, because in both cases, the question is whether the officers had an objectively reasonable basis to believe there was a person in the area searched, unlike, for example, in ***State v. Pinkard***, 2010 WI 81, ¶¶32-35, 327 Wis. 2d 346, 785 N.W.2d 592, or ***State v. Gracia***, 2013 WI 15, ¶17, 345 Wis. 2d 488, 826 N.W.2d 87, where the question was whether the officers had an objectively reasonable basis to believe that the person or persons known to be in the area searched needed medical assistance. If the facts in ***Maddix*** were changed, so that the 911 caller had told the police that the caller had heard the voices of three different people arguing in the apartment, the scenario would be more similar to the facts here.

¶41 The majority takes the position that, as soon as Matalonis suggested to the officers that all of the blood visible around his house belonged to Antony and was the result of a fight between the two men, the officers lacked an objectively reasonable basis for concern that any other injured party might be in the house, and the officers were required to leave without conducting a search. Majority, ¶24. In my view, however, reasonable, prudent officers could have viewed with skepticism elements of Matalonis's account as compared with elements of Antony's account.

¶42 After the officers first made consensual entry to the house, they observed the scene and they observed Matalonis. He "seemed out of breath" and was shirtless, and appeared uninjured. There was blood on the foyer floor and blood near a stairwell. At this time, it was an objectively reasonable possibility that Antony had been involved in a serious physical fight with multiple people, which had occurred at least in part in Matalonis's residence, resulting in persons in addition to Antony being injured. One evident dynamic was that Antony was badly bloodied, and there was blood around the house, while Matalonis appeared uninjured. This suggested that the incident might not have involved violence between two persons, as Matalonis said, but instead had involved more people, as Antony said.

¶43 Then, as the search for any additional injured person progressed, following the signs of blood, one officer discovered blood droplets on the locked door of a room on the second floor, arguably compelling a prompt check of the room for the presence of any person who might be there, injured. *See* ***Pinkard***, 327 Wis. 2d 346, ¶59 ("Principles of reasonableness demand that we ask ourselves whether '"'the officers would have been derelict in their duty had they acted otherwise.'"'" (quoted sources omitted)).[2]

[2] The circuit court concluded:

> [I]t was reasonable for [police] to extend their search for injured parties to [the locked room]. [W]ith someone who is bleeding, … taken away by ambulance, to have a locked door in a house with blood on that door and not search behind that door and to later find that there's a dead body or a bleeding body or a person in need of medical assistance behind that door I think would not only be improper, it would be a sign of poor police work.

¶44 The majority places weight on the following facts: Antony told the officers that he had been beaten; Antony "did not give any indication that any other individuals had been harmed in the fight"; and Antony's account was internally inconsistent. Majority, ¶24. It is true that the officers testified that Antony gave conflicting accounts, including that he had been beaten (implying that he did not injure anyone else) and that this occurred outside a bar (implying that no violence had occurred in a residence). However, the officers were obligated to rely on their judgments, as events unfolded, to assess which parts of what Antony told them might be accurate and which might be a lie or the product of confusion. For the reasons explained above, I believe that an objectively reasonable inference arose from the combination of Antony's statements and the physical evidence observed at the house that, at some point during or after the fight, Antony and the person or people with whom he was fighting were at the house, and that an injured person might still be there.

¶45 I turn now to the question of whether the public interest in the search conducted outweighed the intrusions made on Matalonis's privacy. The intrusions were significant, in that they involved searches of different rooms of his residence while the officers required Matalonis to sit in the living room, including entering a locked room without consent. A warrantless, unconsented search of a residence has great constitutional significance. *See* ***Payton v. New York***, 445 U.S. 573, 589-90 (1980).

¶46 However, while significant, the intrusions here were limited in several respects, according to the facts found by the circuit court and not challenged on appeal. The intrusions were limited in time, did not involve threats, handcuffing, or pointing weapons at Matalonis, were focused on areas suggested by signs of blood, and did not include searches of spaces, containers, or items that

would not be justified by a search for one or more injured persons.[3] Thus, the intrusions were reasonably limited in time, space, and purpose to a search for any injured person, and the degree of overt authority and force displayed matched the public safety purposes. As to the availability of alternatives, given that someone might have been significantly injured, the officers could have concluded that they did not have a reasonable, viable alternative, consistent with public safety, to making a prompt search of the house, including entry to the locked room.

¶47 Matalonis argues on appeal that "[t]his case would … be different" if the officers could have analyzed the blood in the house and determined that none of it was Antony's blood. However, this was not a feasible alternative, and the officers had to make immediate decisions based on evidence that included Antony's statements.

¶48 The majority includes references to evidence regarding marijuana use or possession that the officers became aware of during the course of the search, but does not address this evidence in its analysis. Majority, ¶¶5-6. This implies a concern that this was not a bona fide search for any injured person, but was instead predominantly a search for marijuana or drug paraphernalia. This is a valid topic of concern, because the subjective intent of officers may be a pertinent factor in evaluating whether they acted as bona fide community caretakers. *See* ***State v. Kramer***, 2009 WI 14, ¶36, 315 Wis. 2d 414, 759 N.W.2d 598. However,

> if the court concludes that the officer has articulated an objectively reasonable basis under the totality of the circumstances for the community caretaker function, he [or

[3] The circuit court found, in part, that the officers "searched only in areas where there was blood found and they didn't search drawers or places where obviously people could not hide but only in rooms and larger areas where bodies might be found."

> she] has met the standard of acting as a bona fide community caretaker, whose community caretaker function is totally divorced from law enforcement functions.

Id. Regardless of the view of the majority on this topic, in my opinion the record does not support a conclusion that the officers here lacked an objectively reasonable basis to search the residence in the manner that they did on the grounds that the officers were motivated to some degree by an interest in finding evidence to support a marijuana-related prosecution.