COURT OF APPEALS
DECISION
DATED AND FILED

November 5, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-0814-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARK J. ANDERSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for La Crosse County: DENNIS G. MONTABON, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

PER CURIAM. Mark Anderson appeals his conviction for possession with intent to deliver THC. He claims the trial court erred when it denied his motion to suppress evidence initially discovered during a warrantless inspection of his storage locker. However, because we conclude that the

investigating police officer was performing a valid community caretaker function at the time of the discovery, we affirm.

BACKGROUND

Shortly before 3:00 a.m. on February 28, 1997, Officer John Zimmerman of the Town of Campbell Police Department was dispatched to investigate a citizen report that locks were missing from some units at a local storage facility. Zimmerman arrived at the scene and observed for himself that some of the units were missing locks. He immediately suspected that a burglary or unlawful entry had occurred. Routine police procedure in the case of burglary is to secure the premises. However, Zimmerman did not know which of the unlocked units were vacant and which were occupied, so he opened the doors of each unlocked unit to check for any overt evidence of a break-in or any valuables that needed to be secured. When he opened Zimmerman's unit, he immediately observed a green leafy substance. He took a step into the locker and identified the substance as marijuana. He then left the locker and obtained a search warrant.

STANDARD OF REVIEW

Section 971.31(1), STATS., authorizes review of suppression determinations notwithstanding a subsequent plea of no contest. When reviewing the denial of a motion to suppress evidence, we will uphold the circuit court's findings of fact unless they are clearly erroneous. Section 805.17(2), STATS.; ***State v. Eckert***, 203 Wis.2d 497, 518, 553 N.W.2d 539, 547 (Ct. App. 1996). However, we will independently determine whether the facts found by the circuit court satisfy applicable statutory and constitutional provisions. ***State v. Ellenbecker***, 159 Wis.2d 91, 94, 464 N.W.2d 427, 429 (Ct. App. 1990).

ANALYSIS

The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution prohibit unreasonable searches and seizures.[1] ***State v. Drogsvold***, 104 Wis.2d 247, 264, 311 N.W.2d 243, 251 (Ct. App. 1981). "A search implies a prying into hidden places for that which is concealed." ***Edwards v. State,*** 38 Wis.2d 332, 338, 156 N.W.2d 397, 401 (1968). As the defendant correctly notes, warrantless searches are presumptively unreasonable. ***State v. Gonzalez***, 147 Wis.2d 165, 167-68, 432 N.W.2d 651, 652 (Ct. App. 1988). A handful of exceptions have been "jealously and carefully drawn," however, to balance the interests of the individual with those of the State. ***Id.*** (citation omitted).

Police may act without a warrant when officers are performing a community caretaker role. ***State v. Anderson***, 142 Wis.2d 162, 167, 417 N.W.2d 411, 413 (Ct. App. 1987).

> [W]hen a community caretaker function is asserted as justification for the seizure of a person [or evidence], the trial court must determine: (1) that a seizure within the meaning of the fourth amendment has occurred; (2) if so, whether the police conduct was bona fide community caretaker activity; and (3) if so, whether the public need and interest outweigh the intrusion upon the privacy of the individual.

Id. at 169, 417 N.W.2d at 414. Bona fide community caretaker activity includes police conduct which is "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." ***Id***. at 166,

[1] Due to the similarity of these provisions, Wisconsin courts look to the Supreme Court's interpretation of the Fourth Amendment for guidance in construing the state constitution. ***State v. Roberts***, 196 Wis.2d 445, 452-53, 538 N.W.2d 825, 828 (Ct. App. 1995).

417 N.W.2d 413 (citation omitted). The balancing test requires an objective analysis of the reasonableness of the police conduct in light of such factors as the urgency of the situation facing the officers and the availability of less intrusive alternatives. ***Id***. at 169-70, 417 N.W.2d at 414.

The parties do not dispute that Zimmerman's entry into Anderson's locker constituted a search within the meaning of the Fourth Amendment or that Zimmerman's discovery of marijuana supplied probable cause for the subsequent search warrant. Their dispute centers on whether Zimmerman's initial warrantless entry was a bona fide exercise of the community caretaker function sufficient to justify the intrusion of Anderson's privacy rights. We conclude it was.

First of all, there is no reason to believe that Zimmerman was looking for contraband or any other evidence of illegal activity on the part of locker owners when he briefly checked inside their lockers. His concern about the possible need to secure some of the unlocked units was divorced from the detection of criminal activity by Anderson, regardless of whether he ultimately secured any of the units. Before opening the door to Anderson's locker, Zimmerman did not even know if it was an occupied unit.

Furthermore, we consider the officer's actions to have been reasonable in light of the circumstances. The public has a strong interest in allowing the police to investigate possible property crimes. The locker was not a private residence worthy of the most stringent Fourth Amendment protection, but rather a rented unit in a commercial facility. *Cf.* ***State v. Paterson***, 220 Wis.2d 526, 583 N.W.2d 190 (Ct. App. 1998) (invalidating warrantless entry of home to investigate possible burglary). Ascertaining the names of the locker owners and waking them up in the middle of the night to check whether they

would like to have their property secured was not reasonably necessary when a quick look inside each locker would give the officer the information he needed to fulfill his duties. Because Zimmerman had a legitimate community caretaker justification for opening the door to Anderson's locker, Anderson's Fourth Amendment rights were not violated and his suppression motion was properly denied.

By the Court.—Judgment affirmed.

This opinion will not be published in the official reports. *See* RULE 809.23(1)(b)5, STATS.