

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 12, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP58-CR

Cir. Ct. No. 2012CF421

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TIMOTHY R. VANWEELDEN,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for Washington County: TODD K. MARTENS, Judge. *Affirmed.*

Before Higginbotham, Sherman and Kloppenburg, JJ.

¶1 PER CURIAM. Timothy Vanweelden appeals related judgments convicting him of three drug charges and an order denying his postconviction motion. The sole issue on appeal is whether evidence seized during a warrantless search of Vanweelden's backpack should have been suppressed. We conclude that

suppression was not required because law enforcement officers were acting in their capacity as community caretakers at the time of the seizure. Accordingly, we affirm.

BACKGROUND

¶2 A Washington County deputy sheriff was one of two law enforcement officers from different departments who entered Vanweelden's residence in response to a call about an unconscious person. Upon observing Vanweelden on the bathroom floor with grey skin and blue lips, the deputy formed the belief that Vanweelden was overdosing on drugs. While another officer was already attending to Vanweelden in the bathroom, the deputy questioned Vanweelden's girlfriend about what substances Vanweelden may have taken. After initially asserting that the only substance Vanweelden had taken was alcohol, the girlfriend eventually admitted that she and Vanweelden had been using heroin.

¶3 When Vanweelden's girlfriend subsequently attempted to leave the residence with a backpack, the deputy questioned her about the ownership of the backpack and other items she was carrying. By that time, emergency medical personnel had arrived and Vanweelden was conscious. The deputy surmised that the backpack likely belonged to Vanweelden and that his girlfriend was attempting to dispose of it, since his girlfriend would not say who owned it and had just admitted that she and Vanweelden had been using heroin. The deputy then seized the backpack, saw through its top opening that it contained syringes, and handed it to the other deputy who searched it and found heroin and oxycodone.

STANDARD OF REVIEW

¶4 When we review a suppression motion, we will uphold the circuit court’s findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2) (2013-14);¹ *State v. Eckert*, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996). We will independently determine, however, whether the facts establish that a particular search or seizure violated constitutional standards. *State v. Richardson*, 156 Wis. 2d 128, 137-38, 456 N.W.2d 830 (1990).

DISCUSSION

¶5 The parties agree that the confiscation of Vanweelden’s backpack constituted a seizure within the meaning of the Fourth Amendment, and that the admissibility of the evidence found in the backpack depends upon the second two elements of the community caretaker exception to the general warrant requirement—namely, whether law enforcement officers were exercising a “bona fide” community caretaker function at the time of the seizure and, if so, whether the public interest in having the police exercise that function outweighs the intrusion upon the privacy of the individual represented by the seizure. *See State v. Pinkard*, 2010 WI 81, ¶29, 327 Wis. 2d 346, 785 N.W.2d 592.

¶6 Bona fide community caretaker activity is separate from “the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute,” and is based instead upon objectively reasonable grounds to believe, under the totality of the circumstances, that a person is in need of

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

assistance. *State v. Anderson*, 142 Wis. 2d 162, 166, 417 N.W.2d 411 (Ct. App. 1987) (citation and quotation omitted); *State v. Gracia*, 2013 WI 15, ¶17, 345 Wis. 2d 488, 826 N.W.2d 87. A law enforcement officer may, however, have both investigatory and caretaker motivations within the same contact. *State v. Kramer*, 2009 WI 14, ¶¶32-33, 315 Wis. 2d 414, 759 N.W.2d 598. The balancing test requires an objective analysis of the reasonableness of the police conduct in light of such factors as the degree of the public interest involved, the urgency of the situation; where and when the seizure occurred; the amount of force used or authority displayed; and the availability and feasibility of less intrusive alternatives. *Pinkard*, 327 Wis. 2d 346, ¶¶41-42.

¶7 The totality of the circumstances here supports the conclusion that the deputies were exercising a bona fide community caretaker function at the time they seized Vanweelden's backpack, even if they also had investigatory motives by that time. Vanweelden was still being treated by medical personnel, who had a legitimate need to know exactly what substance or substances Vanweelden had ingested. Although Vanweelden's girlfriend had admitted she and Vanweelden were using heroin, the police had no way of knowing whether Vanweelden had taken the heroin in conjunction with any other substances. The fact that Vanweelden was conscious by the time of the seizure did not mean that he was necessarily coherent, or was any more likely to be forthcoming about illegal activity than his girlfriend, who had already provided the deputy with conflicting information about what substance Vanweelden had ingested.

¶8 We further conclude that the public interest in having the deputy provide assistance to an individual suffering from an apparent overdose outweighed the intrusion on Vanweelden's privacy by seizing and searching the backpack looking for possible substances that Vanweelden had ingested. The

degree of public interest and urgency of the situation were both high because drug overdoses can be fatal and various drugs can interact differently, requiring different treatment. Although the seizure occurred inside Vanweelden's residence, where expectations of privacy are high, the law enforcement officers were already legitimately present there. The additional intrusion of searching the backpack was a proportional response to what the deputies reasonably perceived as a likely effort to remove drugs from the scene, and it occurred at a time when learning about any additional substances Vanweelden might have ingested could be used to treat him. The deputy merely took the backpack from the girlfriend, without drawing his weapon or using force upon her person. Finally, as noted above, the deputy could be reasonably skeptical of the effectiveness of the less intrusive possibility of asking Vanweelden or his girlfriend about any additional substances, given the conflicting information the girlfriend had already provided.

¶19 Because we conclude that the elements of the community caretaker exception were satisfied, we affirm the circuit court's decision to admit the evidence seized from the backpack.

By the Court.—Judgments and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

