

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 21, 2009**

David R. Schanker  
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. 2008AP1204-CR**

**Cir. Ct. No. 2006CF4557**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**JUIQUIN ANTHONY PINKARD,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: M. JOSEPH DONALD, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Juiquin Anthony Pinkard appeals from an amended judgment of conviction for possessing cocaine with intent to deliver and felony bail-jumping, and from a postconviction order denying his motion to reconsider the order denying his suppression motion. The issue is whether the

warrantless entry into Pinkard's home was objectively reasonable pursuant to the community caretaker exception to the Fourth Amendment to justify the subsequent seizure of evidence that was in plain view. We conclude that the officer's stated basis for entering Pinkard's home, predicated on an anonymous tip of concern about two individuals evidently sleeping in an open house surrounded by cocaine, cash and digital scales, satisfies the community caretaker exception despite the officer's subjective law enforcement concerns. Therefore, we affirm.

¶2 Acting on an anonymous tip of concern, police entered Pinkard's home without a warrant, entered his bedroom while he appeared to be sleeping, and found cocaine, drug paraphernalia, and \$969 in cash on a table at his bedside, and a revolver underneath his mattress. When awakened, Pinkard allegedly stated, "[y]ou guys caught me, I'm done." Pinkard was charged with possessing a firearm as a felon, possessing between fifteen and thirty grams of cocaine with intent to deliver as a subsequent drug offense, and felony bail-jumping.

¶3 Pinkard moved to suppress the evidence. The trial court conducted an evidentiary hearing at which the arresting officer testified. The trial court granted Pinkard's motion to suppress the revolver, and denied the remainder of the motion. Pinkard then pled guilty to the cocaine and bail-jumping offenses. The trial court imposed an eight-year sentence, comprised of three- and five-year respective periods of initial confinement and extended supervision for the cocaine offense, and a four-year concurrent sentence, comprised of two two-year periods of initial confinement and extended supervision for the bail-jumping offense. Pinkard moved for reconsideration of the trial court's suppression ruling, filing two supplemental police reports for the trial court to reconsider its determination that the officer was acting as a community caretaker, rather than investigating a drug house. The trial court summarily denied Pinkard's reconsideration motion.

¶4 Pinkard appeals to challenge the trial court’s orders denying his suppression and related reconsideration motions pursuant to WIS. STAT. § 971.31(10). The parties alerted this court to a case pending before the Wisconsin Supreme Court raising an issue regarding the scope of the community caretaker function. *See State v. Kramer*, 2008 WI 115, 310 Wis. 2d 705, 754 N.W.2d 849. The supreme court decided *Kramer* on January 29, 2009, and both parties filed correspondence addressing this supplemental authority. *See State v. Kramer*, 2009 WI 14, \_\_\_ Wis. 2d \_\_\_, 759 N.W.2d 598.

¶5 At the evidentiary hearing on Pinkard’s suppression motion, Milwaukee Police Officer Jon Osowski was the sole witness. The following facts are from Osowski’s testimony. Osowski was on duty on the date in question and received a telephone call from another officer who “stated [that] an anonymous caller had called him and stated that there were two individuals who appeared to be sleeping at [the identified] residence, and there was cocaine, money, and scales present there.... He said the door was wide open, and he was concerned about them.” Osowski then testified about his own actions:

We arrived at the apartment. It’s the rear unit or like the back of a three-family residence, and the back door to that unit accesses the entire first floor of that unit. The door was approximately three-quarters open, and we knocked and announced ourselves as police. After a period of about 30 to 45 seconds, we received no response from any occupants inside, so we made the determination to enter and check the welfare of the occupants.

....

[We went in t]o make sure that the occupants that the caller had referred us were not the victims of any type of crime; that they weren’t injured; that they weren’t the victims of like a home invasion, robbery; that they were okay, and to safeguard any life or property in the residence.

....

When we went in, there was a bedroom directly to the left when you go in the rear door. That door was open. Two people appeared to be sleeping or laying in the bed. Again, announced ourselves as police, loud, in the small bedroom. No one woke up. We actually had to physically shake the defendant, Mr. Pinkard, to wake him up.

....

The narcotics and scales that were in plain view [prompted Pinkard's arrest], and then I lifted up the mattress, and there was a revolver underneath the mattress. ... [I seized all these items because t]hey're illegal to possess, as evidence.

On cross-examination, Osowski testified that the other officer told him about the tip, and asked him to respond, telling Osowski that "he couldn't [respond]." Osowski was not told that this was a drug investigation, however he admitted that the situation "sounded like a drug house."

¶6 The trial court determined that "the police were operating within their role and function as the community caretakers" when they entered the residence. The trial court's determination was supported by the officers finding the door open, as reported by the tipster, which lent reliability to the tip. The trial court also determined that the police knocked and announced their presence when they entered the house and again when they entered the bedroom, where they found drugs and scales in plain sight. The trial court suppressed the revolver because that was not within plain sight.

¶7 After Pinkard pled guilty and was sentenced, postconviction counsel moved for reconsideration of that part of the order denying Pinkard's suppression motion, attaching two supplemental police reports indicating that there was indication of drug use and that Osowski responded to investigate "the complaint." Pinkard contends that these reports show that Osowski entered the residence

without a warrant incident to a drug investigation; Osowski's claim that he was acting in his community caretaker role was merely a pretext to attempt to justify his warrantless entry into Pinkard's home and bedroom.

¶8 To justify an exception to the Fourth Amendment pursuant to the community caretaker function, the State bears the burden of proof that: (1) police are engaged in "bona fide community caretaker activity;" and (2) the public interest outweighs the intrusion on an individual's privacy. *See State v. Ziedonis*, 2005 WI App 249, ¶¶14-15, 287 Wis. 2d 831, 707 N.W.2d 565. The issue here is whether police were engaged in "bona fide community caretaker activity," or if instead, they were merely using the community caretaker role as a pretext in the hopes of justifying a drug investigation without a warrant.

¶9 Many of Pinkard's contentions revolve around legitimately debatable concerns before *Kramer*; however, these concerns have now been resolved adversely to him. *Kramer* explains that

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 has met the standard of acting as a bona fide community caretaker, whose community caretaker function is totally divorced from law enforcement functions.... "The officer's [subjective] fear or belief ... is but one factor in the totality of the circumstances that a court may consider in determining whether an [officer's conduct was objectively reasonable]."

*Id.*, 2009 WI 14, ¶36 (bracketing and second set of ellipses in original) (quoting *State v. Kyles*, 2004 WI 15, ¶39, 269 Wis. 2d 1, 675 N.W.2d 449). Consequently, whether the police officers' activity as community caretakers was "totally divorced from the detection, investigation, or acquisition of evidence relating to

the violation of a criminal statute,” addressed in *State v. Anderson*, 142 Wis. 2d 162, 166, 417 N.W.2d 411 (Ct. App. 1987) (quoting *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973)), is no longer a valid basis to reject the community caretaker exception to the Fourth Amendment pursuant to *Kramer*. See *Kramer*, 2009 WI 14, ¶36. “[I]n a community caretaker context, when under the totality of the circumstances an objectively reasonable basis for the community caretaker function is shown, that determination is not negated by the officer’s subjective law enforcement concerns.” *Id.*, ¶30.

¶10 Pinkard’s argument after *Kramer* essentially becomes either that the police’s warrantless entry into his home and then bedroom was not objectively reasonable under the totality of the circumstances as an exercise of the police’s community caretaker function, or that Osowski was not engaged in a community caretaker function at all when he entered Pinkard’s home. Osowski testified that he was directed to go to an address identified by an anonymous tipster with concern because the house was open, people were apparently asleep in close proximity to cocaine and attendant paraphernalia, which is sufficient pursuant to *Kramer* to satisfy an articulation of an objectively reasonable basis to engage in a community caretaker function even if there was a potential to exercise law enforcement functions during that investigation. See *id.* Likewise, the officers’ reports expressing law enforcement concerns about that same situation at Pinkard’s house, do not negate the community caretaker function and attendant

exception to the Fourth Amendment. *See id.* We therefore affirm the suppression and reconsideration rulings.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2007-08).

