

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 10, 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. 2009AP575-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 2008CM0544**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**LINDA T. HOOPER,**

**DEFENDANT-APPELLANT.**

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APPEAL from judgment and order of the circuit court for Dodge County: STEVEN G. BAUER, Judge. *Affirmed.*

¶1 DYKMAN, P.J.<sup>1</sup> Linda Hooper appeals from a judgment of conviction for possessing a controlled substance contrary to WIS. STAT. § 961.41(3g)(c). She contends that the State violated her right to be free from

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

unreasonable searches and seizures under the Fourth Amendment to the United States Constitution by illegally searching the dresser drawers in her home without a search warrant. Hooper argues the cocaine seized from the constitutionally invalid search must be suppressed. We conclude that the search was justified by the State's efforts to assist Emergency Medical Technicians (EMTs) in alleviating Hooper's distressed medical condition and falls within the community caretaker doctrine exception to the Fourth Amendment's warrant requirement. Accordingly, we affirm.

### *Background*

¶2 The following undisputed facts are taken from the witnesses' testimony at trial and the trial court's findings of fact. On March 23, 2008, Richard Dahl, a police officer for the City of Beaver Dam, was dispatched to Linda Hooper's apartment to assist the Beaver Dam Rescue Squad. Prior to his arrival, Dahl was informed by the Dodge Central Dispatch Unit that Hooper called requesting emergency medical treatment after ingesting cocaine and having difficulty breathing. Dahl arrived at approximately the same time as the EMTs at Hooper's residence, and entered the premises upon hearing someone say "[C]ome in." Upon entering the apartment, the EMTs and Dahl discovered Hooper reclining on the floor just inside of the entry of the door.

¶3 Immediately, the EMTs began providing assistance to Hooper and tried to decipher what Hooper had ingested. The EMTs questioned Hooper about what substance she had taken, but were unable to obtain a satisfactory answer in order to determine an adequate treatment, as she was unresponsive, incoherent, and difficult to understand. Furthermore, Hooper was in respiratory distress and was having difficulty breathing, even with an oxygen mask on. Her skin had

become bluish-purple in color. In response to Hooper's condition, the EMTs told Dahl to search for any harmful substances that Hooper may have ingested, which caused her to struggle to breathe. Accordingly, Dahl "started doing a sweep of the apartment."

¶4 Within a minute or two after Dahl started his sweep of the apartment, he was joined by Officer Lisa Jones and Sergeant Scott Bahr. Prior to arriving at the apartment, Jones was notified by the Dodge Central Dispatch Unit of a possible cocaine overdose at Hooper's residence. Upon arriving at Hooper's apartment, Jones was told by the EMTs assisting Hooper that they believed that Hooper had overdosed on cocaine and that she should assist in Dahl's efforts to locate what substance Hooper had ingested so that they could properly treat her.

¶5 Subsequently, Jones entered Hooper's bedroom, without a search warrant or Hooper's consent, in search of any substances that Hooper may have ingested that could explain her condition. The bedroom was located two to three feet away from where Hooper was discovered, and was closed off from the rest of the apartment. In the bedroom, Jones found a mirror on top of Hooper's bedroom dresser which had a white powder residue on it. Following the discovery of the mirror, Jones searched through the dresser drawers. In the drawers, she found a white porcelain dish laden with "chunks" of a white powdery substance, which she immediately believed to be cocaine.

¶6 Jones showed her findings to Dahl, who placed the suspected cocaine in a box. Dahl showed the EMTs the suspected cocaine. The EMTs took Hooper to a hospital for treatment, and Dahl took the suspected cocaine to the police station, where it was tested. The police and EMTs left the apartment at the

same time. The substance tested positive for cocaine. Dahl did not inform the EMTs or hospital personnel about the test results.

¶7 The State charged Hooper with possession of cocaine, in violation of WIS. STAT. § 961.41(3g)(c). Hooper filed a motion to suppress the cocaine found in her dresser, arguing that the investigation violated her Fourth Amendment rights under the United States Constitution. The circuit court denied the motion to suppress, concluding that the cocaine was seized following “a legitimate community caretaker search.” Thereafter, Hooper pled no contest to possessing cocaine. Hooper appeals.

#### *Standard of Review*

¶8 “In reviewing a motion to suppress, we accept the circuit court’s findings of fact unless they are clearly erroneous; the correct application of constitutional principles to those facts presents a question of law, which we review de novo.” *State v. Drew*, 2007 WI App 213, ¶11, 305 Wis. 2d 641, 740 N.W.2d 404.

#### *Discussion*

¶9 Hooper contends that while police are permitted to make a warrantless search when there is a person in immediate need of aid, they may only seize evidence in plain view during the course of their legitimate activities. Hooper argues that while the police officers rightly entered Hooper’s apartment to provide assistance to her and the treating EMTs, they violated the Fourth Amendment by undertaking a wider search for evidence in her bedroom that was not in plain view of where the officers found Hooper.

¶10 Furthermore, Hooper contends that the search was not justified under the community caretaker exception to the warrant requirement because there were no exigent circumstances that would support the State’s argument. Prior to receiving medical assistance and aid from the EMTs and the police, Hooper explicitly stated to dispatch that she ingested cocaine and was suffering from a violent reaction. Therefore, Hooper argues that the police and EMTs had sufficient information to provide appropriate medical treatment, without having to search through her bedroom dresser drawers. Moreover, the police neither provided a sample of the discovered substance to the EMTs nor informed the hospital staff where Hooper was being treated that the discovered substance had tested positive for cocaine. Based on these circumstances, Hooper argues that the search and seizure was unreasonable.

¶11 “The Fourth Amendment [to the United States Constitution] proscribes all unreasonable searches and seizures, and it is a cardinal principle that searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” *Mincey v. Arizona*, 437 U.S. 385, 390 (1978) (citation omitted). One of these exceptions is when police respond to a medical emergency. *Id* at 392. Under this exception, a warrantless entry and search are justified under the law when responding officers “reasonably believe that a person within is in need of immediate aid.” *Id*. Moreover, in adjudging a warrantless search case, a court must render its decision based on the facts presented as there are no per se rules for testing the reasonableness of the search. *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 357 (1931), *abrogated on other grounds as stated in Arizona v. Gant*, 129 S. Ct. 1710 (2009).

¶12 The United States Supreme Court has upheld warrantless searches based on the community caretaker doctrine. *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973). In *Dombrowski*, the Court upheld a warrantless search of an automobile towed to a garage even though no probable cause existed to believe that the vehicle was involved in the commission of a crime or contained any criminal evidence. *Id.* at 446. The Court found that the warrantless search was incident to the local police’s caretaking function to protect the community’s safety, because local police suspected that there was a weapon in the car which might be stolen by vandals. *Id.* at 441-46. The Court held that a warrantless search is reasonable when the police are engaging in public utilitarian purposes “divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.” *Id.* at 441.

¶13 The Wisconsin Supreme Court has held that neither the Fourth Amendment to the United States Constitution nor Article I, Section 11 of the Wisconsin Constitution limit police from making a warrantless search when they reasonably believe that a person is in need of immediate emergency assistance. *La Fournier v. State*, 91 Wis. 2d 61, 63-64, 67-68, 280 N.W.2d 746 (1979). In *La Fournier*, the Wisconsin Supreme Court recognized the emergency rule exception, and stated that officers can make warrantless entries when they reasonably believe that a person is in distress and requires medical assistance. *Id.* However, the emergency rule exception cannot be utilized to justify searches which were conducted for the purpose of securing evidence. *State v. Pires*, 55 Wis. 2d 597, 604, 201 N.W.2d 153 (1972).

¶14 We have considered the community caretaker doctrine created in *Cady*. In *State v. Ferguson*, 2001 WI App 102, ¶12, 244 Wis. 2d 17, 629 N.W.2d 788, we said that whether the community caretaker exception applies “requires an

examination of three factors.” The first factor considers whether a search and seizure within the meaning of the Fourth Amendment has occurred. *Id.* Secondly, the test evaluates whether the police activity was a “bona fide community caretaker activity,” where the police are engaged in public utilitarian purposes outside the realm of detection, investigation, or acquisition of criminal evidence. *See id.*, ¶¶10, 12. Finally, the court must determine whether the public interest outweighs the infringement upon the privacy of an individual. *Id.*, ¶12. In terms of the final factor,

relevant considerations include: (1) the degree of the public interest and the exigency of the situation; (2) the attendant circumstances surrounding the [search and] seizure, 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.* (citation omitted). We followed *Cady’s* reasoning when we found that a warrantless search of a home was legitimate under the community caretaker doctrine. *Id.*, ¶¶ 22-23.

¶15 Following the rationale in *Cady*, *La Fournier* and *Ferguson*, we affirm the trial court’s denial of Hooper’s motion to suppress because the action of the police satisfied the requirements of the community caretaker doctrine. It is undisputed that the police obtained the cocaine through a search and seizure. Secondly, the police were engaged in a bona fide community caretaker activity as they assisted the EMTs in gathering information necessary to render emergency medical assistance. Hooper argues that the police were not involved in a bona fide community caretaker activity because the EMTs had already been informed that she had ingested cocaine and the police failed to reveal the results of their substance identification tests to medical personnel. We disagree, because the

EMTs asked the police to do a sweep of Hooper's apartment to find any harmful substances that she may have ingested which would explain her distressed condition. The officers looked no further than was necessary to provide the required information for the EMTs to make a determination as to the source of Hooper's condition. At that point, the police were not involved in a criminal investigation, but a community caretaker activity. Upon discovering the cocaine, the officers ceased their search and left the apartment at the same time as the EMTs—who quickly rushed Hooper to the hospital.

¶16 The third factor of the community caretaker doctrine is satisfied because the public need and interest of the search outweighed the harm of the intrusion on Hooper's privacy. The first consideration relevant to the final factor of the community caretaker exception is the degree of public interest and the exigency of the circumstances. Hooper was experiencing difficulty breathing and was unable to sufficiently answer all of the EMTs' questions. The situation was dire, as represented by Hooper's skin turning a bluish-purple color. The preservation of life is of paramount public interest.

¶17 The next consideration is the attendant circumstances surrounding the police's search and seizure of the cocaine. While the search took place in Hooper's residence, the police left Hooper in the care of the EMTs and acted under the directions of the EMTs, who had responded to Hooper's 911 call and who were attempting to properly diagnose Hooper's ailment. At no point during the police's interaction with Hooper did they exercise overt authority or force.

¶18 Next, we look to whether an automobile was involved. We note that the search in Hooper's case is of a home, which weighs in Hooper's favor. *See State v. Paterson*, 220 Wis. 2d 526, 536, 583 NW.2d 190 (Ct. App. 1998).



However, the involvement of an automobile is but one of the facts that we consider in the totality of circumstances in determining whether the community caretaker doctrine applies. In *Ferguson*, we did not address the automobile element when we determined that the community caretaker doctrine applied to the factual circumstances of the case. We do no differently here.

¶19 Finally, there were no suitable alternative measures that could have been taken to preserve Hooper's life and prevent the intrusion into her privacy. Hooper was the only other readily available source of information about what she ingested that caused her distressed condition. While Hooper informed police dispatch that she had used cocaine, it was incumbent on the EMTs to verify that information before providing treatment. When police and EMTs arrived, Hooper was unresponsive and incoherent. Had the police sought a warrant instead of conducting an immediate search, Hooper's chance of survival would have diminished. The *Ferguson* requirements are met.

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

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.

