

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 13, 2003

Cornelia G. Clark
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. 02-1959-CR

Cir. Ct. No. 01-CM-261

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEFFREY L. LEGGIONS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dane County: STEVEN D. EBERT, Judge. *Affirmed.*

¶1 DYKMAN, J.¹ Jeffrey Leggions appeals from a judgment of conviction for two counts of resisting or obstructing an officer, contrary to WIS. STAT. § 946.41(1). He contends that his motion to suppress evidence should have

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (f) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

been granted because the police officers did not have probable cause to restrain and arrest him. We affirm.

BACKGROUND

¶2 At approximately 5:42 p.m. on January 15, 2001, City of Madison Police Officers Parr and Myatt responded to a report of an intoxicated man refusing to leave a friend's apartment. As the two uniformed officers approached the apartment building from their marked squad car they saw Leggions come out of the front door and head towards the street. Leggions and the officers made eye contact, and then Leggions began to run towards the street. Myatt yelled "Madison police" but Leggions did not stop running. There were two snowdrifts in front of the apartment building. Leggions made it over the first one, but when trying to get over the second snowdrift, fell face first into the frozen snow. Concerned that he might be injured, Myatt and Parr approached Leggions, who was still face down in the snow. Each taking one of Leggions's arms, the officers raised him off the ground. At this time Parr noticed a strong odor of intoxicants coming from Leggions. In response to Parr's inquiring if he was okay, Leggions began mumbling unintelligibly.

¶3 Myatt and Parr then released Leggions to see if he could stand on his own. Leggions was severely leaning to one side and almost fell down, so the officers again grabbed Leggions's arms to stabilize him. They were all standing on ice at this time. When Parr released Leggions's arm a second time, Leggions turned towards Myatt. Thinking that Leggions was either going to flee or push Myatt out of the way, Parr grabbed his arm again. Leggions tensed up the arm held by Parr, while Myatt grabbed his right arm and told him to calm down. At this point all three fell to the ground, with Myatt hurting her leg in the process.

The officers tried to secure Leggions's arms, but he had tucked them underneath his chest. Leggions did not respond to verbal commands to untuck his arms. Myatt gave Leggions three orders to bring his arms out, and when he didn't comply, sprayed him with pepper spray. Parr called for more officers to assist with the situation while he and Myatt continued to struggle with Leggions. During this time Parr felt Leggions grabbing at his handcuff case, which was on Parr's belt. Leggions ripped the snap off the case. Eventually, Parr and Myatt were able to handcuff him.

¶4 Leggions was charged with two counts of resisting or obstructing an officer. He moved to suppress all evidence derived from the officer's conduct, claiming that the seizure was not justified by the community caretaker function, nor was there probable cause to arrest him. After hearing testimony from Officer Parr, the trial court denied the motion to suppress. It held that the officers reasonably made contact with Leggions when he fled upon seeing them, that the circumstances warranted further inquiry under the community caretaker function, and there was probable cause to arrest when Leggions began resisting and making movements that could be interpreted as threatening. Leggions appeals.

DISCUSSION

¶5 When reviewing a motion to suppress evidence, we will uphold the trial court's findings of fact unless they are clearly erroneous. *State v. Fields*, 2000 WI App 218, ¶9, 239 Wis.2d 38, 619 N.W.2d 279. However, the application of constitutional principles to the facts is a question of law that we decide de novo without deference to the trial court's decision. *Id.* After reviewing the record, we conclude that the trial court's findings are not clearly erroneous. Therefore we consider only whether the officers' actions were a proper exercise of

their community caretaker function and if there was probable cause for Leggios's arrest.

¶6 Leggios concedes that his fleeing from the officers upon making eye contact with them constituted a reasonable suspicion that criminal activity was afoot and justified a temporary investigative stop. *See State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990). However, he contends that the existence of reasonable suspicion precludes application of the community caretaker exception to probable cause, and therefore the trial court erred in denying the motion to suppress. This argument is unavailing.

¶7 The Fourth Amendment to the United States Constitution guarantees that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause.” The Wisconsin Constitution provides a nearly identical protection in Article I, § 11. A seizure by police made in the course of community caretaker activity may be done without a warrant, but the seizure must meet the Fourth Amendment’s reasonableness requirement. *State v. Kelsey C.R.*, 2001 WI 54, ¶34, 243 Wis. 2d 422, 626 N.W.2d 777. We use a three-step test to evaluate the reasonableness of such a seizure: “(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.” *State v. Anderson*, 142 Wis. 2d 162, 169, 417 N.W.2d 411 (Ct. App. 1987) (*Anderson I*), *rev’d on other grounds*, *State v. Anderson*, 155 Wis. 2d 77, 454 N.W.2d 763 (1990).

¶8 The circumstances of this case satisfy the *Anderson I* test. A seizure within the meaning of the Fourth Amendment occurred when the officers grabbed Leggions's arms for a second time because he could not stand upright on his own. Given that it was a cold day in January, and Leggions had fallen hard in the snow, was unable to stand without assistance and was speaking unintelligibly, the officers' actions constituted bona fide community caretaker activity. The third criterion, whether the public interest outweighs the intrusion upon Leggions's privacy, requires us to consider four additional factors. They are as follows:

(1) the degree of the public interest and the exigency of the situation; (2) the attendant circumstances surrounding the 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.

Kelsey C.R., 2001 WI 54 at ¶36 (citing *Anderson I*, 142 Wis. 2d at 169-70).

¶9 With respect to the first factor, the degree of public interest and the exigency of the situation support the reasonableness of the seizure. There is a strong public interest in the health and welfare of citizens. Investigating to determine the status of an individual who has just fallen face down in the snow, has made no effort to get up, and, when raised to his feet, cannot stand on his own or respond to questions about his condition, is entirely consistent with the public interest. The exigency of the situation also supports the reasonableness of the seizure because, had not Parr and Myatt interacted with Leggions, he could have remained in the snow on a cold winter day for a substantial period of time, risking further injury due to exposure. Moreover, darkness was quickly approaching, if it had not already fallen, thus adding to the reasonableness of the officers' conduct. The second factor is also satisfied. The attendant circumstances indicated that

Leggions was outside on a winter day and unable to care for himself. The degree of overt authority and force displayed was reasonable. The officers grabbed Leggions's arms when it became obvious that he would fall if not supported. This restraint was further justified when Leggions made what Parr perceived as threatening motions towards Myatt. The officers did not handcuff Leggions until his instability caused the three of them to fall to the ground where he continued to struggle and failed to respond to Myatt's verbal commands. The third factor is inapplicable as no automobile was involved. Fourth, there were no feasible alternatives because the officers could not determine Leggions's physical condition without approaching him. When Leggions did not answer their questions, raising him up to see if he could stand was an effective option. And when it became apparent that Leggions would likely fall without their assistance, grabbing his arms was the only available response. Therefore, we conclude that the seizure was reasonable under the community caretaker function.

¶10 Leggions asserts that the community caretaking function cannot justify his seizure because the officers were present to respond to a complaint and had a reasonable suspicion to detain him when he fled. As a result, the situation was not "totally divorced" from the investigation relating to a possible criminal offense. We disagree with Leggions's analysis.

¶11 In *Kelsey*, the supreme court stated that "[t]he community caretaker function provides that the police may act in certain situations which are 'totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.'" *Kelsey*, 2001 WI 54 at ¶34 (citation omitted). Leggions reads *Kelsey* as foreclosing consideration of the community caretaker function when police are interacting with an individual and they already have a reasonable suspicion that criminal activity had occurred or was about to occur.

This conclusion ignores Section V of *Kelsey*, where the court determined that the situation justified an investigative detention. Kelsey, a teenage girl, was sitting alone on the sidewalk at night in a bad neighborhood. She fled after being told to “stay put” by a uniformed police officer. Concerned that she might be a runaway, the officers gave chase and detained her. *Id.* at ¶43. The court first concluded that Kelsey’s flight from the officers constituted reasonable suspicion, and therefore the temporary detention did not violate the Fourth Amendment. *Id.* at ¶42. Then, reviewing the situation again under the *Anderson I* factors, the court held that the officers’ actions were also a reasonable exercise of the community caretaking function. *Id.* at ¶¶45-46.

¶12 Accordingly, nothing in *Kelsey* supports the conclusion that the presence of factors supporting reasonable suspicion excludes consideration of whether the police conduct qualifies as community caretaking activity. The standard for the community caretaker function consists of factors that are not related to possible criminal activity. Thus the “totally divorced” language refers to actions beyond the investigation of crime that are “an important and essential part of the police role.” *Anderson I*, 142 Wis. 2d at 167. As *Kelsey* demonstrates, the police response to a situation may be warranted by both reasonable suspicion and community caretaker function. These are not mutually exclusive standards.

¶13 Leggios next argues that the trial court erred in denying his motion to suppress because the police officers did not have probable cause to arrest him. He suggests that the actions that Parr interpreted as threatening could merely have been attempts to regain his balance while standing on the ice.

¶14 This argument is not supported by the record. Parr testified that when he released Leggios’s arm for a second time, Leggios turned towards

Myatt. Based on Leggions's earlier flight, Parr thought that he would flee again or possibly push Myatt out of the way, and so he grabbed Leggions's arm again. Despite being told to "stay put," Leggions struggled with the officers and they all fell to the ground. This record amply supports the conclusion that there was probable cause to arrest Leggions for resisting an officer.

By the Court.—Judgment and order affirmed.

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

