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**DISTRICT IV**

September 10, 2019

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You are hereby notified that the Court has entered the following opinion and order:

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2018AP1647-CR                      State of Wisconsin v. Matthew G. Stroede, Jr. (L.C. # 2017CF69)

Before Fitzpatrick, P.J., Blanchard, and Kloppenburg, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Matthew Stroede, Jr., appeals the circuit court judgment of conviction for possession of methamphetamine. Stroede argues that the circuit court erred in concluding that the community caretaker doctrine justified the warrantless entry into his bedroom. Based upon our review of the

briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2017-18).<sup>1</sup> We affirm.

The facts come from the suppression hearing at which the sole witnesses were two police officers who entered Stroede's bedroom. The officers were responding to a complaint from a homeowner who was allowing Stroede to stay with her. The homeowner reported to police that there was a woman in her home whom she wanted escorted off the property. When the police arrived, the homeowner informed police that the woman and Stroede were upstairs asleep in Stroede's bedroom. The homeowner told the police that she was concerned about heavy drug use associated with the woman.

Stroede's bedroom door was wide open. An officer observed that Stroede and the woman were in bed apparently asleep, and further observed a half-full bottle of vodka in the bedroom. The officer repeatedly yelled Stroede's name, and also tried yelling the woman's name and "wake up," and identifying himself as a police officer. Both officers testified that this yelling went on for at least two minutes without any response from Stroede or the woman. One of the officers testified, "Neither one of them moved. I mean, they didn't move a muscle. They didn't flinch." The other officer testified that the response from both Stroede and the woman was "[n]othing."

Based on the circumstances, the police became concerned and entered Stroede's bedroom. The police were finally able to wake Stroede and the woman by "bounc[ing]" them up

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

and down on the bed. While inside the bedroom, the police discovered drug paraphernalia and other evidence in plain view.

Stroede moved to suppress this evidence. In denying the motion, the circuit court credited the officers' testimony and concluded that the community caretaker doctrine justified the police entry into Stroede's bedroom.

When reviewing a suppression decision, we uphold the circuit court's factual findings unless they are clearly erroneous. See *State v. Pinkard*, 2010 WI 81, ¶12, 327 Wis. 2d 346, 785 N.W.2d 592. However, we review de novo whether the community caretaker doctrine can be constitutionally applied to a given set of facts. See *id.*

Stroede does not contend that the circuit court made any erroneous factual findings. He does, however, argue that the court erred in its legal conclusion that the community caretaker doctrine applies. We disagree.

There is no dispute that the police entry into Stroede's bedroom was a search. Under *Pinkard*, this search was justified by the community caretaker doctrine if the State met its burden to show that "the police were exercising a bona fide community caretaker function" and that "the public interest outweighs the intrusion upon the privacy of the individual such that the community caretaker function was reasonably exercised within the context of a home." See *id.*, ¶29.

In *Pinkard*, our supreme court concluded that the State satisfied these standards under circumstances that are in many ways similar to those here. Both cases involve two non-responsive individuals and other evidence suggesting a drug or alcohol overdose. See *id.*, ¶¶2-5,

35-39. Here, the facts favoring application of the community caretaker doctrine are at least as strong as they were in *Pinkard*, and we affirm the circuit court on that basis. We need not and do not repeat all of the facts or analysis in *Pinkard*. Rather, we focus on the two main ways in which Stroede argues that the circumstances here differ from those in *Pinkard*.

Stroede first argues that, unlike here, the police in *Pinkard* acted based on a reliable anonymous tip that the non-responsive individuals in question were sleeping next to drugs and drug paraphernalia. However, the homeowner's report here that the woman with Stroede was associated with heavy drug use, combined with the half-full vodka bottle police observed, provided a similarly strong reason to suspect that Stroede and the woman were using drugs or alcohol or both.

Stroede's second argument is that, unlike here, the police in *Pinkard* observed that an exterior door to the defendant's residence was left open, a factor that the court in *Pinkard* viewed as suggesting either that "the occupants had been victims of a crime in which the assailant fled ... or that they had ingested an overdose of drugs and were not able to close the door." *See id.*, ¶37. We agree that the open exterior door in *Pinkard* is a relevant factor not present here. We conclude, however, that the absence of this factor is easily outweighed by the particularly remarkable lack of responsiveness that Stroede and the woman with him demonstrated in response to protracted police efforts to rouse them. In *Pinkard*, the two individuals failed to respond after police "knocked on the [exterior] door and announced their presence" and then "loudly announced" their presence one additional time upon entering the individuals' bedroom. *See id.*, ¶¶1, 3-5, 35, 38-39. Here, in contrast, both Stroede and the woman remained completely non-responsive throughout at least two minutes of yelling by a police officer situated just outside Stroede's open bedroom door. Further, as noted, the officer

testified that he tried yelling Stroede's name, the woman's name and "wake up," and identifying himself as a policing officer, all to no avail.

Therefore,

IT IS ORDERED that the circuit court judgment of conviction is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*