WISCONSIN SUPREME COURT
THURSDAY, JANUARY 7, 2010
9:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which reversed a Milwaukee County Circuit Court decision, Judge Martin J. Donald, presiding.

2008AP1204 State v. Pinkard

This criminal case examines the law as it relates to the "community caretaker" function of police and constitutional protections against unreasonable search and seizure.

Some background: Juiquin Anthony Pickard was convicted of possession of cocaine with intent to deliver and felony bail jumping. The circuit court denied Pinkard's motion to suppress evidence obtained during a warrantless entry. Pinkard appealed, and the Court of Appeals affirmed.

During a hearing on the suppression motion, an officer of the Criminal Intelligence Gang Squad testified that another police officer had received an anonymous call, indicating that two individuals were sleeping in a house where the door was open and cocaine, money and scales were present.

The officer testified that police knocked on the door, which was three-quarters open, and announced themselves as police. After 30 seconds to 45 seconds, police "made the determination to enter and check the welfare of the occupants," and to determine if the occupants were victims of any type of crime. Police woke Pinkard in a bedroom, where cocaine, marijuana and scales were in plain view and a pistol was found under a mattress.

The circuit court concluded that police were acting in their community caretaker function when they entered the residence and Pinkard's bedroom. Pinkard was sentenced to three years initial confinement and five years of extended supervision. Charges of being a felon-in-possession of a firearm were dismissed after the circuit court granted that portion of the suppression motion.

Pinkard contends police used their community caretaker function as a pretext to provide cover for a warrantless entry to investigate the presence of drugs and drug paraphernalia.

Pinkard argues that the officers did not articulate an objectively reasonable basis for performing a caretaker function under the facts of his case. The anonymous caller did not indicate concern for the occupants of the residence, and no paramedic was called, Pinkard contends. Police could easily have called the house or checked with neighbors to determine if there was any reason to expect an emergency situation, Pinkard contends.

Pinkard asserts that the Court of Appeals indicated an officer's subjective intent is not relevant to the objective analysis of whether the officer was engaged in a bona fide community caretaker function.

Pinkard claims that State v. Kramer, 2009 WI 14, 315 Wis. 2d 414, 759 N.W.2d 598. did not make such subjective intent irrelevant, rendering the Court of Appeals' decision in conflict with Kramer and other prior decisions.

A decision by the Supreme Court could clarify the law as it relates to warrantless searches and the community caretaker function of police.