IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 29485

STATE OF SOUTH DAKOTA,

Plaintiff and Appellant,

vs.

DANIEL JAMES GRASSROPE,

Defendant and Appellee.

APPEAL FROM THE MAGISTRATE COURT
OF THE SECOND JUDICIAL CIRCUIT
MINNEHAHA COUNTY, SOUTH DAKOTA

THE HONORABLE ANDREW ROBERTSON
Magistrate Court Judge

APPELLANT'S BRIEF

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Notice of Appeal Filed on December 9, 2020

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STATE OF SOUTH DAKOTA

No. 29485

STATE OF SOUTH DAKOTA,

Plaintiff and Appellant,

v.

DANIEL JAMES GRASSROPE,

Defendant and Appellee.

PRELIMINARY STATEMENT

In this brief, Defendant and Appellee, Daniel James Grassrope, will be referred to as "Defendant." Plaintiff and Appellant, State of South Dakota, will be referred to as "State." References to documents will be designated as follows:

Settled Record . . . . . SR [page]

Suppression Hearing Transcript . . . . . SHT [page]

JURISDICTIONAL STATEMENT

On November 24, 2020, The Honorable Andrew Robertson, Magistrate Court Judge for the Second Judicial Circuit, signed an Order granting Defendant's Motion to Suppress evidence brought forth by the State. SR 74. On December 4, 2020, Defendant filed the Notice of Entry of Order. SR 78. The State filed its Petition for Permission to Appeal in a

timely manner on December 9, 2020. This Court has jurisdiction under SDCL 23A-32-5.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

WHETHER THE MAGISTRATE COURT ERRED IN GRANTING DEFENDANT'S MOTION TO SUPPRESS?

> The magistrate court erred when it granted Defendant's motion to suppress based on violation of his Fourth Amendment rights.
>
> *State v. Deneui*, 2009 S.D. 99, 775 N.W.2d 221
>
> *State v. Short Bull*, 2019 S.D. 28, 928 N.W.2d 473

STATEMENT OF THE CASE AND FACTS

An Information was filed on March 18, 2020, charging Defendant with Count 1: Driving or Control of Vehicle While Under Influence of Alcohol, and Count 2: Driving or Control of Vehicle While Having .08 Percent or More by Weight of Alcohol in Blood. SR 5. The charges resulted from an incident that took place on March 7, 2020. SHT 4. After being charged, Defendant filed a motion to suppress certain evidence arguing that law enforcement violated his Fourth Amendment rights by stopping his vehicle. SR 12.

A suppression hearing took place on October 6, 2020, before The Honorable Andrew Robertson, Magistrate Court Judge. SHT 1. The State called Officer Nielson Conley, a police officer with the Sioux Falls Police Department. SHT 3. Officer Conley testified that he had been employed with the Sioux Falls Police Department for ten years. SHT 4.

His involvement with Defendant began around 2:46 a.m. on March 7, 2020. *Id.* Officer Conley was on patrol when he received a radio call from law enforcement dispatch informing him that a child had called 911. *Id.* Dispatch relayed that the child was six years old, and the child stated that "daddy was being mean to mom." SHT 5. It was further relayed to Officer Conley, at 2:45:26 a.m., that the dad was going outside to his car to leave. SHT 11. Believing a potential domestic disturbance was taking place, Officer Conley responded to the call, which was coming from the address of 320 North Western Avenue in Sioux Falls, Minnehaha County. SHT 4.

Officer Conley arrived on scene at 2:48:20 a.m. SHT 12-13. When he arrived on scene, Officer Conley observed a vehicle leaving the parking lot of the said address. SHT 5. That vehicle was a tan Chevy Malibu. SHT 13. He did not remember seeing any other vehicles leaving the parking lot that night. SHT 14. He proceeded to follow the vehicle rather than go to the residence. SHT 5. Officer Conley stated that he followed the vehicle because he had very limited information from a child at that time. SHT 6. He wasn't sure if the dad was a possible victim or if someone had been hurt. *Id.* Moreover, Officer Conley testified that at least two officers are typically dispatched for domestic disturbance calls because of the potential danger involved. SHT 4-5. Consequently, Officer Conley knew that another officer would shortly arrive on scene who could make contact with the parties at the residence while he stopped the vehicle.

SHT 6. So, knowing that another officer would be arriving on scene to go to the residence, Officer Conley stayed with the vehicle that left the parking lot. *Id.*

At 2:48:40 a.m., dispatched updated the information it sent out saying that the car was described as a silver vehicle. SHT 12-13. Officer Conley subsequently initiated a traffic stop on the vehicle he was following at 2:49:05 a.m. SHT 14. He then made contact with the driver, who was later identified as Defendant. SHT 7. Officer Conley immediately detected the strong odor of intoxicants from Defendant. *Id.* Defendant was ultimately placed under arrest for driving while intoxicated. *Id.*

Upon completion of the hearing, the magistrate court granted Defendant's motion to suppress. SHT 26. The Honorable Andrew Robertson distinguished the case at hand from *State v. Short Bull*, 2019 S.D. 28, 928 N.W.2d 473. SHT, 24. According to the court, there was not an overt asking for help in the present case like there was in the circumstances surrounding *Short Bull*. *Id.* The court believed that the lack of information known of Officer Conley at the time he was dispatched, as well as the fact that the officer did not go directly to the residence, but instead followed the suspect vehicle, prevented the community caretaker doctrine from being applicable. SHT 25. Moreover, the court believed there was a clear discrepancy in that the information Officer Conley was given at 2:48:40 was that the vehicle the dad was

driving was a silver vehicle, but the vehicle Officer Conley pulled over 25 seconds after that notice was a tan vehicle. *Id.*

On October 27, 2020, the Honorable Andrew Robertson signed an order granting Defendant's motion to suppress. SR 63. On November 13, 2020, Defendant filed Notice of Entry of that order. SR 67. On November 24, 2020, after Amended Findings of Fact and Conclusions of law were filed, the Honorable Andrew Robertson signed a new order granting Defendant's motion to suppress. SR 74. On December 4, 2020, the Defendant filed the Amended Notice of Entry of Order. SR 78. The State filed its Petition for Permission to Appeal in a timely manner on December 9, 2020.

ARGUMENT

THE MAGISTRATE COURT ERRED IN GRANTING DEFENDANT'S MOTION TO SUPRESS.

A. Introduction

The State contends that Officer Conley was properly engaging in his role as a Community Caretaker when he stopped Defendant's vehicle. However, the Magistrate Court found that Officer Conley performed an unconstitutional seizure of Defendant's vehicle under both the United States Constitution, U.S. Const. amend. IV and under the South Dakota Constitution, S.D. Const. art. VI, § 11. SR 74. Consequently, the Magistrate Court granted Defendant's Motion to Suppress. *Id.* The State,

however, maintains that the Magistrate Court erred when it granted Defendant's Motion to Suppress.

B. Standard of Review

This Court reviews a motion to suppress evidence involving an alleged violation of a constitutionally protected right under a de novo standard of review. *State v. Kaline*, 2018 S.D. 54, ¶ 9, 915 N.W.2d 854, 856–57 (see also *State v. Hemminger*, 2017 S.D. 77, ¶ 16, 904 N.W.2d 746, 752). As for a factual finding and legal conclusions, this Court has stated "[W]e review the circuit court's factual findings for clear error but 'give no deference to the circuit court's conclusions of law.'" *State v. Lar*, 2018 S.D. 18, ¶ 6, 908 N.W.2d 181, 183 (quoting *State v. Medicine*, 2015 S.D. 45, ¶ 5, 865 N.W.2d 492, 495). In essence, a factual finding "is clearly erroneous only if, after reviewing the evidence in its entirety, 'we are left with a definite and firm conviction that a mistake was made.'" *State v. Ballard*, 2000 S.D. 134, ¶ 9, 617 N.W.2d 837, 840 (quoting *State v. Almond*, 511 N.W.2d 572, 574 (S.D. 1994)). Once the facts have been correctly ascertained, we review the circuit court's application of those facts de novo. *State v. Babcock*, 2006 S.D. 59, ¶ 12, 718 N.W.2d 624, 628.

C. Analysis

The Magistrate Court held that Officer Conley went outside of the scope of performing a community caretaking function as a law enforcement officer both because there was no overt asking for help and

because, rather than go to the residence to check on the well-being of the mother and child who had called, he followed the suspect vehicle. SHT 25, SR 74. The Magistrate Court also believed there was a clear discrepancy in that the information Officer Conley was given at 2:48:40 was that the vehicle the dad was driving was a silver vehicle, but the vehicle Officer Conley pulled over 25 seconds after that notice was a tan vehicle. *Id.* However, while these facts distinguish the case at hand from *State v. Short Bull*, it is a distinction without a difference.

The community care doctrine was first recognized by the United States Supreme Court in the case of *Cady v. Dombrowski*, 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973). In *Cady* the Court explained that it is possible for a law enforcement officer to investigate a matter, like a vehicle accident "in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." Id. at 441, 93 S.Ct. at 2528. Thus, *Cady* carved out an exception to the warrant requirement of the Fourth Amendment to the United States Constitution.

This Court adopted the community caretaking function exception in *State v. Rinehart*, 2000 S.D. 135, ¶ 7, 617 N.W.2d 842, 843. In *State v. Deneui*, it was explained that "[m]odern society has come to see the role of police officers as more than basic functionaries enforcing the law.

From first responders to the sick and injured, to interveners in domestic disputes, and myriad instances too numerous to list, police officers fulfill a vital role where no other government official can." 2009 S.D. 99, ¶ 49, 775 N.W.2d 221, 242; *see also State v. Kramer*, 315 Wis.2d 414, 759 N.W.2d 598, 610 (2009); *see also Rist v. N.D. Dep't of Transp.*, 665 N.W.2d 45, 49 (N.D.2003); *see also State v. Short Bull*, 2019 S.D. 28, ¶ 14, 928 N.W.2d 473, 477.

This Court had a recent opportunity to revisit the community care doctrine in *State v. Short Bull*. In that case, a Rapid City police officer was dispatched to a Country Inn and Suites hotel for reports of a domestic disturbance. *Short Bull* at ¶2. The reporting party, the night clerk at the hotel, called in saying that a woman in room 315 had called the front desk asking for help. *Id.* The clerk called in a little later stating that the woman was in lobby and confirmed that her request for help was due to a domestic dispute. *Id.* However, the woman then promptly left the hotel. *Id.* When Officer Holt arrived on scene he was informed that the woman was in the parking with, but he was not given either a description of the vehicle the woman might be in or information about which direction she was traveling. *Id* at ¶3. Though Officer Holt did not observe any pedestrian or traffic movement in the parking lot, he did eventually spot a black SUV leaving the lot and, consequently, initiated a traffic stop. *Id.* The driver of the vehicle, the defendant in that case, exhibited signs of

intoxication and was ultimately arrested for driving under the influence. *Id.* at ¶5.

Though counsel for the defense in that case tried to suppress all evidence obtained from the stop, this Court held that the officer was acting in his community caretaking role when he stopped the defendant's vehicle. *Id.* at ¶18. According to the Court,

> The information relayed to [the officer] described a potentially dangerous situation. The dispatcher advised Officer Holt of a 'disturbance' at the hotel, which he could reasonably infer was a domestic disturbance involving a couple. Domestic disputes can, in some instances, escalate into violent confrontations involving injury or death to one or both parties…[the officer] did not stop Short Bull's vehicle to investigate a criminal offense or to gather evidence. He had no facts that would lead him to believe the driver was impaired. He was operating solely within his community caretaker role to determine if the woman needed assistance. Under the circumstances, we believe that [the officer] provided specific and articulable facts supporting his decision to stop Short Bull's vehicle. Therefore, the circuit court correctly affirmed the magistrate judge's denial of Short Bull's motion to suppress.

Id. at ¶18, 20 (citations omitted).[1]

In the present case, Officer Conley's actions and rationale comport almost exactly with the actions and rationale of the officer in *Short Bull*. Just like the officer in *Short Bull*, Officer Conley was responding to a potentially dangerous situation that he could reasonably infer was a domestic disturbance involving a couple. This inference was due to the fact that a six-year-old child called 911 at 2:46am, a time when children

[1] It's worth noting that the Court in *State v. Short Bull* also believed that the officer possessed reasonable suspicion of criminal activity. *Id*. at ¶21.

are typically asleep in their beds, to say that "daddy was being mean to mom." SHT 4-5. An overt request for help isn't necessary in order for an officer to engage in his role as a community caretaker. *See, e.g., State v. Rinehart, State v. Deneui*, *State v. Kleven*, 2016 S.D. 80, 887 N.W.2d 740. Additionally, just like the officer in *Short Bull*, Officer Conley did not stop Defendant's vehicle to investigate a criminal offense or to gather information. He had no facts that would lead him to believe the driver was impaired. He was operating solely within his community caretaker role to determine if the driver needed assistance.

Where Officer Conley's actions differ from the officer in *Short Bull* amounts to a distinction without a difference. While it is true that Officer Conley was looking for the father instead of going to the residence where it was believed the mother and child were, that fact is irrelevant. As this Court stated in *Short Bull*, "Domestic disputes can, in some instances, escalate into violent confrontations involving injury or death to one *or both parties*." *Short Bull* at ¶ 18 (emphasis added). Officer Conley noted that he wasn't sure if the father in this case was a possible victim or if someone had been hurt. SHT 6. Ergo, he had just as much of responsibility to the father's wellbeing as he did the parties at the residence. Moreover, as Officer Conley testified, at least two officers are typically dispatched for domestic disturbance calls because of the potential danger involved. SHT 4-5. Consequently, he knew that another officer would be on scene shortly to attend to the residence. SHT 6.

In addition, while Officer Conley was notified twenty seconds after he arrived on scene that the vehicle in which the father left was silver and not tan, it is important to remember that the information being relayed to him originated with a six-year-old child. SHT 5. A child's grasp on the difference between tan and silver is reasonably dubious. Additionally, Officer Conely was responding to this call at 2:45 in the morning, when it is dark outside. SHT 4. Being able to distinguish between tan and silver in the dark is understandably difficult. Most importantly, however, is that Officer Conley noted that he did not recall seeing any other vehicles leaving the parking lot that night. SHT 14. Officer Conley at least knew to look for a vehicle, whereas the officer in *Short Bull* had no idea that the victim that he was looking for was even in a vehicle. *Short Bull* at ¶ 19. It would have been irresponsible for Officer Conley to abandon his initial pursuit until he was certain that the driver of that vehicle was not the father referenced in the metro call, and that the father did not need any assistance.

The facts and testimony at the suppression hearing supports the finding that the warrantless seizure exception (community care doctrine) was satisfied.

CONCLUSION

Officer Conley was properly engaging in his role as a community caretaker when he stopped Defendant's vehicle. Consequently, the Magistrate Court erred when it granted Defendant's Motion to Suppress

evidence obtained pursuant to that stop. The State respectfully requests that this Court reverse the Magistrate Court's ruling granting Defendant's motion to suppress.

Respectfully submitted

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellant's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellant's Brief contains 2,501 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 2016.

Dated this 23rd day of February, 2021.

/s/ Nicholaus Michels
Nicholaus Michels
Deputy State's Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 23rd, 2021, a true and correct copy of Appellant's Brief in the matter of *State of South Dakota v. Daniel James Grassrope* was served via –

Certified mail upon:

- The South Dakota Supreme Court
  500 E. Capitol Ave.
  Pierre, SD 57501

- South Dakota Office of the Attorney General
  1302 E. Hwy 14
  Suite 1
  Pierre, SD 57501

Electronic mail upon:

- The South Dakota Supreme Court at scclerkbriefs@ujs.state.sd.us.

- Jason Koistinen at jkoistinen@minnehahacounty.org.

/s/ Nicholaus Michels
Nicholaus Michels
Deputy State's Attorney

STATE OF SOUTH DAKOTA	)	IN MAGISTRATE COURT
	) SS	
COUNTY OF MINNEHAHA	)	SECOND JUDICIAL CIRCUIT

	)	CRI. 20-2146
STATE OF SOUTH DAKOTA,	)	
Plaintiff,	)	AMENDED
	)	FINDINGS OF FACT
vs.	)	AND CONCLUSIONS OF LAW
	)	
DANIEL JAMES GRASSROPE,	)	
Defendant.	)	

Defendant's Motion to Suppress came on for hearing on the 6th day of October 2020, before the Honorable Andrew Robertson. The Defendant, Daniel James Grassrope, was personally present with his counsel, Mr. Jason Koistinen. The State was present and represented by Deputy State's Attorney, Mr. Nicholaus Michels. After hearing testimony from Sioux Falls Police Officer Nielsen Conley, reviewing the parties' previously-submitted briefs, and reviewing a video recording of the traffic stop portion of the incident taken from Officer Conley's patrol unit, the Court makes the following:

FINDINGS OF FACT

1. On March 7, 2020, Officer Nielsen Conley of the Sioux Falls Police Department was dispatched to 320 Northwestern Avenue – Apartment #15 in Sioux Falls, Minnehaha County, South Dakota.
2. Officer Conley noted in his primary report that he was dispatched to an unknown problem.
3. Officer Conley was provided information from the dispatcher via the Command Log.
4. A 6-year-old child had called 911.
5. The child had given the phone to his mother.
6. When 911 asked the mother if there was an emergency, the mother hung up the phone.
7. 911 called back and the child answered the phone.

8. The child stated daddy was being mean to mom by talking back to mom and that mom didn't like it
9. The child also informed dispatchers that dad was leaving the resident to go to his car and that the car was silver.
10. Officer Conley received no information that either mom or child had left the residence.
11. The officer received no information indicating a physical assault had occurred or that there were any injuries sustained as a part of the unknown disturbance.
12. Officer Conley arrived at the address at 2:48:20 but did not immediately proceed to Apartment #15.
13. Dispatch updated Officer Conley at 2:48:40 that the child said his father drove a silver car but provided no further details of the father's car.
14. Upon his arrival at the address, Officer Conley had observed a Chevy Malibu leaving the apartment parking lot and followed it.
15. Officer Conley described the Malibu as being tan and identified the license plate, and then subsequently initiated a traffic stop.
16. Officer Conley did not observe any traffic violations and based solely on the information he had relating to the unknown disturbance/family dispute.
17. After the stop, and following an investigation, Defendant was arrested for driving a motor vehicle while under the influence of an alcoholic beverage.

CONCLUSIONS OF LAW

1. Any Finding of Fact that is more properly a Conclusion of Law shall be deemed so, and any Conclusion of Law that is more properly a Finding of Fact shall be deemed so.
2. The Court has jurisdiction over the parties and subject matter of this action.
3. The Fourth Amendment of the United States Constitution and Article VI, Section 11 of the South Dakota Constitution protect citizens from unreasonable searches and seizures. U.S. Constitution, Amendment IV; South Dakota Constitution, Article VI, Section 11.
4. A law enforcement officer must have reasonable suspicion of criminal activity to stop an automobile, and such suspicion must not be the product of mere whim, caprice or idol curiosity, but must be based upon specific articulable facts which taken together with

rational inferences from those facts, reasonably warrant the intrusion. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *State v. Chavez*, 2003 S.D. 93, 668 N.W.2d 89 (S.D. 2003).

5. Police are permitted to do a warrantless search when they are acting within their role as "community caretakers" and are able to state specific facts, that are taken with a rational inference, reasonably warranting the search. *State v. Short Bull*, 2019 S.D. 28, ¶ 13, 928 N.W.2d 473, 477.
6. The community caretaking exception should be cautiously and narrowly applied in order to minimize the risk that it will be abused or used as a pretext for conducting an investigatory search for criminal evidence." State v. Short Bull, 2019 S.D. 28, ¶ 15, 928 N.W.2d 473, 477
7. The information relayed to the officer in *Short Bull* described a potentially dangerous situation, in which an individual made an overt request for help at a hotel and the distressed citizen reiterated the need for assistance to hotel staff. The officer arriving in *Short Bull* confirmed with hotel staff that an individual had just been in the lobby requesting help but had just left the hotel in an unknown vehicle and in an ink own direction. Within a short time period the officer then observed a Black SUV leaving the hotel parking lot.
8. In the present matter, there was no information given that a crime had been committed, no request for help, and no indication that either the mother or child had left the apartment, only that father had gone to his car.
9. Officer Conley was aware that dad's car was silver after being dispatched to the residence, but subsequently followed and pulled over a tan vehicle that happened upon the same area as the officer was arriving on scene
10. The Community Caretaker exception may have been applicable to the apartment so as to allow the officers to enter and check on the well-being of the mother and child who had called, depending on the facts presented in that scenario.
11. However, as there was no information that the father had either committed a crime or needed any assistance, there is a separation between the need to check on the mother and child in the apartment and checking on the father in the vehicle.

12. There is also a clear discrepancy in that the father's car was described as a "silver car" and yet Officer Conley continued to follow and ultimately pulled over a "tan Chevy Malibu".

ORDER

It is HEREBY ORDERED that Defendant's Motion to Suppress Evidence is granted.

Signed this 24th day of November 2020.

BY THE COURT:

Honorable Andrew T. Robertson
Magistrate Court Judge
Second Judicial District

ATTEST:
/s/ Angie Gries
Clerk of Courts
By: _____
Deputy

(SEAL)

FILED
NOV 25 2020
Minnehaha County, S.D.
Clerk Circuit Court

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

NO. 29485

STATE OF SOUTH DAKOTA,

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APPEAL FROM THE MAGISTRATE COURT
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HONORABLE ANDREW ROBERTSON
Magistrate Court Judge

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Notice of Appeal Filed on December 9, 2020

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Defendant and Appellee.

PRELIMINARY STATEMENT

All references herein to the Settled Record are referred to as "SR." The transcript of the Suppression Hearing held October, 6, 2020 is referred to as "SH." The magistrate court's Findings of Fact and Conclusions of Law will be referred to as "FFCL." The State's Brief is referred to as "SB." All references to documents will be followed by the appropriate page number. Defendant and Appellee, Daniel Grassrope, will be referred to as "Grassrope."

JURISDICTIONAL STATEMENT

The State appeals the magistrate court's Order granting Grassrope's Motion to Suppress evidence entered on November 24, 2020. SR 74. Notice of

Entry of the magistrate court's order was filed on December 4, 2020. SR 78. The State filed its Petition for Permission to Appeal on December 9, 2020. This Court granted the State's Petition For Allowance of Appeal from Intermediate Order on January 4, 2021. SR 80. This Court has jurisdiction over this appeal pursuant to SDCL 23A-32-5.

STATEMENT OF LEGAL ISSUE

I. WHETHER THE MAGISTRATE COURT ERRED IN GRANTING GRASSROPE'S MOTION TO SUPPRESS.

The magistrate court granted Grassrope's Motion to Suppress, finding the community caretaker exception to the Fourth Amendment did not apply.

State v. Rinehart, 2000 S.D. 135, 617 N.W.2d 842

State v. Short Bull, 2019 S.D. 28, 928 N.W.2d 473

State v. Kleven, 2016 S.D. 80, 887 N.W.2d 740

State v. Zarvis, No. 2019-143, 2020 WL 1659299 (Vt. Mar. 20, 2020)

STATEMENT OF CASE

On March 18, 2020, the State filed an Information charging Grassrope with two alternative counts of driving while under the influence. SR 5. Grassrope filed a motion to suppress evidence asserting law enforcement obtained the evidence in violation of the Fourth Amendment. SR 12.

Grassrope's motion was set for a hearing on October 6, 2020. At the conclusion of the hearing, the magistrate court granted Grassrope's motion and requested Grassrope submit Findings of Fact and Conclusions of Law. SH 26. The magistrate court signed an order granting Grassrope's motion on November

24, 2020. SR 74. On December 9, 2020, the State filed a Petition for Permission to Appeal.

STATEMENT OF FACTS

On March 7, 2020, at 2:46:02 a.m., Sioux Falls Police Department Officer Nielsen Conley ("Conley") was dispatched to 320 North Western Avenue in Sioux Falls. SH 4. Conley was receiving information through his Command Log ("CAD"), which chronologically tracks information exchanged between the reporting officer and the 911 dispatcher. *Id*. at 8-10.

Conley was the sole witness to testify at the suppression hearing. In reviewing the CAD printout during his testimony, Conley identified the exact moments certain pieces of information were transmitted between the dispatcher and law enforcement. *Id*. At 2:43:39 a.m., the dispatcher sent a message indicating a child was on the phone. *Id*. at 10. According to Conley, the CAD narrative indicated the child called 911, then gave the phone to his mother. *Id*. at 10. When the dispatcher asked the mother if there was an emergency, the mother hung up the phone. *Id*. at 10-11. The dispatcher called back and the child answered. *Id*. at 11. The child told the dispatcher that "daddy was being mean to mom." *Id*. at 4, 11. At 2:45:16 a.m., the child told the dispatcher the father had gone to the car. *Id*. at 11. Conley was dispatched at 2:46:02 a.m. *Id*. at 11. At 2:46:22 a.m., the dispatcher updated the CAD narrative to indicate the "dad was talking back at mom and mom didn't like it." *Id*. at 11.

At 2:48:20 a.m., Conley arrived at the address. *Id*. at 12; FFCL 2. Conley

did not receive any information indicating a physical assault had occurred. *Id*. at 13; FFCL 2. Conley did not receive any information that any parties were injured. *Id*. Conley did not receive any information that anyone required or requested any medical assistance. *Id*.; FFCL 2. Conley did not receive any information indicating either the mother or the child had left the apartment. *Id*. at 13-14; FFCL 2. According to Conley, he assumed the call was a domestic dispute.[1] *Id*. at 4.

When Conley arrived at the address, he saw a vehicle leaving the parking lot. *Id*. at 5. He caught up to the vehicle, which was a tan Chevy Malibu, and began to follow it. *Id*. Instead of going to the residence, Conley followed the tan Malibu. *Id*. According to his testimony, he followed the vehicle because he "had very limited information from a six-year old child," and he didn't know if the dad was the victim or the suspect. *Id*. Conley initiated a traffic stop of the tan Chevy Malibu at 2:49:05 a.m. *Id*. at 6-7. He identified the driver as Daniel Grassrope. *Id*. at 7. While speaking with Grassrope, he detected a strong odor of intoxicants. *Id*. After further investigation, Conley arrested Grassrope for driving while intoxicated. *Id*.

On cross-examination, Grassrope questioned Conley about a discrepancy between his police report and the CAD narrative. *Id*. at 12. According to Conley's report, "the child gave apartment 15 and said the dad left outside and was going to his car. The car was described as a Silver Chevy Malibu." *Id*. at 11-12. Conley's

[1] According to Conley, SFPD policy requires a minimum of two officers to report to domestic disputes. *Id*. at 4-5.

report continued, indicating he "arrived in the area a short time later and observed a Chevy Malibu pull out of the parking lot at 320 North Western Avenue." *Id*. at 12. Conley was confronted with the CAD narrative, which showed he did not receive a vehicle description until 2:48:40 a.m., twenty seconds after he initiated his pursuit of the vehicle leaving the parking lot. *Id*. at 12. Conley testified the information in his report was a mistake. *Id*. In fact, Conley never received any information describing the make or model of the vehicle, only that the vehicle was silver in color. *Id*. at 12-13.

ARGUMENT

I. THE MAGISTRATE COURT CORRECTLY GRANTED GRASSROPE'S MOTION TO SUPPRESS BECAUSE OFFICER CONLEY'S ACTIONS DID NOT FALL WITHIN THE COMMUNITY CARETAKER EXCEPTION.

A. Standard of Review

This Court "review[s] the [lower] court's grant or denial of a motion to suppress involving an alleged violation of a constitutionally protected right under the de novo standard of review." *State v. Kleven*, 2016 S.D. 80, 887 N.W.2d 740 (citing *State v. Smith*, 2014 S.D. 50, ¶ 14, 851 N.W.2d 719, 723). This Court "review[s] the [lower] court's factual findings for clear error." *Id*. (citing *State v. Mohr*, 2013 S.D. 94, ¶ 12, 841 N.W.2d 440, 444). "Once the facts have been determined, we give no deference to the court's application of a legal standard to those facts." *Id*. (citing *State v. Fierro*, 2014 S.D. 62, ¶ 12, 853 N.W.2d 235, 239). Those questions of law are reviewed de novo. *Id.*

B. *The Community Caretaker Exception*

"The Fourth Amendment to the United States Constitution and Article VI, § 11 of the South Dakota Constitution protect individuals from unreasonable searches and seizures." *State v. Short Bull*, 2019 S.D. 28, ¶ 11, 928 N.W.2d 473, 476. The text of the Fourth Amendment has been interpreted to require law enforcement to obtain advance judicial approval, through the warrant procedure, before conducting searches and seizures. *Id*. In some instances, warrantless searches and seizures fall into an exception to the Fourth Amendment, and are therefore deemed reasonable. *Id*. at ¶¶ 11-12. "A warrantless search and seizure is permissible only if it satisfies a specific exception to the warrant requirement." *State v. Deneui*, 2009 S.D. 99, ¶ 14, 775 N.W.2d 221, 230.

"The United States Supreme Court first recognized the [community caretaker] exception in *Cady v. Dombrowski*, 413 U.S. 433, 93 S.Ct. 2523 (1973)." *Kleven*, 2016 S.D. 80, ¶ 8, 887 N.W.2d at 742. This Court adopted the community caretaker exception in *State v. Rinehart*, 2000 S.D. 135, 617 N.W. 2d 842, finding that "under appropriate circumstances a law enforcement officer may be justified in stopping a vehicle to provide assistance, without needing any reasonable basis to suspect criminal activity." *Id.* ¶ 8 (quoting *State v. Brown*, 509 N.W.2d 69, 71 (N.D.1993)).

More recently, this Court held that "police officers may undertake a warrantless search or seizure when they are acting within their roles as 'community caretakers' *and* are able to 'articulate specific facts that, taken with

rational inferences, reasonably warrant the intrusion.' " *Kleven*, 2016 S.D. 80, ¶ 10, 887 N.W.2d at 743 (emphasis added).

C. Analysis

The State argues that Conley's actions fall within the community caretaker exception to the Fourth Amendment's warrant requirement. SB 9. In advancing this argument, the State primarily relies on *State v. Short Bull*, 2019 S.D. 28, 928 N.W.2d 473. In *Short Bull*, a hotel clerk called police after a female guest staying at the hotel called the front desk and asked for help. *Id*. ¶ 2, 928 N.W.2d at 474. Shortly after the clerk's first call to authorities, the clerk called again to say the female guest was in the lobby of the hotel. *Id*. The clerk spoke with the female guest and confirmed she was requesting help due to a domestic disturbance. *Id*. The female guest told the clerk the male half was still in the room, then left the hotel. *Id*. Officer Holt was in the area and responded to the hotel. *Id*. at ¶ 3. When he pulled into the rear parking lot of the hotel, he encountered a black SUV leaving the parking lot. *Id*. Officer Holt followed the SUV and initiated a traffic stop. *Id*. The driver of the vehicle was ultimately arrested for driving while under the influence. *Id*.

The State's brief acknowledges factual differences between this case and *Short Bull*. SB 10. While the State does concede that "Conley's actions differ from the Officer in *Short Bull*," it characterizes the factual variance as "a distinction without a difference." *Id*. But these factual differences provided the magistrate court with the specific reasons why the community caretaker doctrine is

inapplicable in this case - as the magistrate court noted, "[t]here are distinguishing facts between the case at hand and the primary 'community caretaker' case that the State is primarily relying on [*Short Bull*] to justify the stop of the Defendant in this matter." FFCL 3. Furthermore, the State's brief does not assert that the magistrate court made any clearly erroneous factual findings.

Here, the magistrate court applied the undisputed facts to reach its conclusion. First, the magistrate court noted the absence of an "overt request for help for a distressed citizen at a hotel" which occurred in *Short Bull*. FFCL 3. The State points to *Rinehart*, *Kleven,* and *Deneui* to assert "[a]n overt request for help is not necessary in order for an officer to engage in his role as a community caretaker." SB 10. However, as outlined below, the responding officers in *Rinehart*, *Kleven,* and *Deneui* made independent observations to reasonably conclude the subject of their intrusion would be incapable of making an overt request for help.

For example, the officer in *Rinehart* observed a vehicle traveling well below the posted speed limit. 2000 S.D. 135, ¶¶ 2-4, 617 N.W. 2d at 843. After observing this unusual driving behavior for six blocks, the officer became concerned that the driver might have a medical problem, possibly a stroke. *Id*.

In *Kleven*, an officer observed a man in the driver's seat of a running vehicle at 1:00 a.m. in late January. 2016 S.D. 80, ¶ 2, 887 N.W.2d at 741. Forty-minutes later, a different officer drove by and made the same observation as the first officer. *Id*. at ¶ 3. The first officer notified the second officer that she had

seen the same vehicle at 1:00 a.m. *Id*. The second officer parked behind the subject vehicle and approached. *Id*. at ¶ 4. He was unable to tell if the occupant of the vehicle was sleeping or passed out. *Id*.

The officers in *Deneui* "decided to enter the residence 'to check to make sure nobody was incapacitated inside.' " 2009 S.D. 99, ¶ 6, 775 N.W.2d at 228. Both of the officers "had personally experienced the adverse affects of ammonia fumes" from a prior experience, and one officer knew "that ammonia could 'knock somebody out.' " *Id*.

The magistrate court's decision also correctly identified the ways in which Conley's actions did not comport with his role as a community caretaker, and did not align with the actions of the responding officer *Short Bull*. FFCL 2. Conley did not have any information indicating the mother and child had left the apartment. FFCL 2. Considering Conley knew the child reported *watching the father* go to the car, it is a reasonable deduction to conclude the child and mother remained in the apartment. Instead of checking the well-being of the mother and child inside the apartment unit, Conley pursued a vehicle leaving the scene. FFCL 2. In light of his testimony and the CAD narrative, the magistrate court knew that Conley hadn't received any sort of vehicle description when he started pursuing the vehicle. FFCL 2.

In contrast to Conley's actions, the officer in *Short Bull* knew the female half of a confirmed domestic dispute had departed from the hotel lobby and was in the parking lot. *Short Bull*, 2019 S.D. 28, ¶ 3, 928 N.W.2d at 474. Knowing that

the female half had requested help, then left, the officer in *Short Bull* surveyed the parking lot of the hotel. *Id*. Because the officer was aware that the female half had left the hotel, this Court determined "it was reasonable for [the officer in *Short Bull*] to infer that the woman who had been a party to the disturbance may be *in the vehicle* and in need of assistance." *Id*. at ¶ 19, 928 N.W.2d at 479 (emphasis added). In essence, this Court found the officer's actions in *Short Bull* were reasonable *because* his actions aligned with the facts and circumstances relayed by the dispatcher.

The magistrate court correctly recognized the significance of Conley's decision to pursue the father when it concluded "the Community Caretaker exception may have been applicable to the apartment so as to allow the officers to enter and check on the well-being of the mother and child who had called." FFCL 3. In making this conclusion, the magistrate court understood that an integral component of the *Short Bull* decision was the responding officer's intention to assist the female that requested help.

The State relies on Conley's statement, which suggested the father might have been the victim, to argue "[Conley] had just as much responsibility to the father's well-being as he did the parties at the residence." SB 10; SH 6. But Conley was assuming a victim existed even though he had no information that a crime had occurred. See *State v. Zarvis*, No. 2019-143, 2020 WL 1659299 (Vt. Mar. 20, 2020) (concluding the community caretaker exception did not apply when an officer stopped a woman driving away from a convenience store after the clerk

reported the woman and a man were arguing and slamming car doors outside of the store). Moreover, knowing the dispatcher relayed information indicating the child reported "daddy is being mean to mommy," and that "dad was talking back to mom and mom didn't like it," the State's assertion that, if a victim did exist, it could have been the *father,* strains credulity – especially within the context of a warrantless seizure under the community caretaker exception. The child's statements are not similar to the confirmed domestic disturbance and overt request for help which allowed the officer in *Short Bull* to reasonably infer he was entering a "potentially dangerous situation." 2019 S.D. 28, ¶ 18, 928 N.W.2d at 477.

In this case, Conley was provided "[v]ague and limited information." FFCL 3. While the "specific and articulable facts" standard is typically applied to warrantless intrusions occurring during criminal investigations, "its use has not been exclusively connected with the detection of criminal activity." *Short Bull*, ¶ 13, 928 N.W.2d at 476. This Court has upheld warrantless intrusions when the officer is acting as a community caretaker *and* the officer is capable of articulating "specific facts, taken with rational inferences, [that] reasonably warrant the intrusion." *Id*. (citing *Kleven*, 2016 S.D. 80, ¶ 10, 887 N.W.2d at 743) (emphasis added). Conley's testimony did not articulate any specific facts. To fall within the exception, Conley must be acting as a community caretaker while concurrently possessing specific facts that would reasonably warrant the intrusion.

Conley's decision to pursue the father does not fall within the realm of

"rational inferences [that] reasonably warrant the intrusion." *Id*. ¶ 13, 928 N.W.2d at 476 (citing *Kleven*, 2016 S.D. 80, ¶ 10, 887 N.W.2d at 743). This is an instance in which the Court should "cautiously and narrowly appl[y] [the community caretaker exception] in order to minimize the risk that it will be abused or used as a pretext for conducting an investigatory search for criminal evidence." *Short Bull*, ¶ 15, 928 N.W.2d at 477 (quoting *Commonwealth v. Waters*, 20 Va.App. 285, 456 S.E.2d 527, 530 (1995)). The State's assertion that "Conley's actions and rationale comport almost exactly with the actions and rationale of the officer in *Short Bull*" is unfounded. SB 9. Accordingly, the community caretaker exception does not apply in Grassrope's case.

CONCLUSION

Based upon the forgoing arguments and authorities, Grassrope respectfully requests that the magistrate court's Order granting of Grassrope's Motion to Suppress be affirmed.

Respectfully submitted this 6th day of April, 2021.

/s/ Christopher Miles
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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Book Antiqua typeface in 12-point type. Appellant's Brief contains 2,908 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Word 2007.

Dated this 6th day of April, 2021.

/s/ Christopher Miles
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 6th day of April, 2021, a true and correct copy of the Appellee's Brief were electronically served upon:

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APPENDIX