No. 130286

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- CASEY ROBERT HAGESTEDT, Defendant-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 2-21-0715. There on appeal from the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, No. 17 CF 2205. Honorable Ann Celine O'Hallaren Walsh, Judge Presiding.

REPLY BRIEF FOR DEFENDANT-APPELLANT

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ARGUMENT

"[A]n open cabinet door." - the State. (St. Br. 1, 6, 7, 11, 12, 13, 19, 20, 22, 24, 25, 26, 28, 29, 35, 41).

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The Search of Casey's Chained and Locked Kitchen Cabinet Violated His Fourth Amendment Privacy Rights Because its Contents Were Not in Plain View and the Search Was Not Justified By the Exigent Circumstance that Afforded the Officer Warrantless Entry Into His Home.

Casey Hagestedt has raised two distinct yet interrelated arguments in this case: A. The contents of the cabinet are not in plain view, and B. Officer Liebich violated the scope and license of his warrantless entry into Casey's home by investigating the cabinet during an ongoing emergency. (Op. Br. 11, 26). Although the concepts and elements of these two arguments overlap significantly, each argument leads to the conclusion that Officer Liebich's inspection of the above-pictured cabinet was a search. First, closing and locking a kitchen cabinet in one's home is a clearly expressed and reasonable privacy interest such that a minor gap in the door did not place its contents into plain view. Alternatively, the search was unauthorized because the officer went beyond the limited scope and license of the community caretaking exception.

A. The contents of the clearly locked cabinet were not in plain view because Casey's privacy interest over the contents of a clearly chained and locked kitchen cabinet within his own home is not destroyed by a minor structural flaw leaving a less than one-inch gap that Officer Liebich exploited to illuminate its darkened interior with a flashlight.

Casey's first argument was that the plain view doctrine does not apply in this case. The State responds by repeatedly asserting that this cabinet was "open." (St. Br. 1, 6, 7, 11, 12, 13, 19, 20, 22, 24, 25, 26, 28, 29, 35, 37, 41). However, as the picture on the previous page illustrates, the cabinet was anything but "open." Black's Law Dictionary defines "open," in relevant part, as "Manifest; apparent; notorious. …Visible; exposed to public view; not clandestine." OPEN, Black's Law Dictionary (12th ed. 2024). As shown by Defense Exhibit Number 2, this cabinet's

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contents were not apparent, visible, or exposed to public view. Rather, the doors were closed, and the handles were chained and locked together. Further, its contents were not visible except where a flashlight was shined into a less than one-inch gap left by a faulty hinge. (R. 81); (Sup E. 10). Yet, the State argues that Casey had no reasonable expectation of privacy because "[s]omeone who leaves a cabinet door ajar can reasonably anticipate that a person passing by might look through the open door, and therefore has no reasonable expectation of privacy in the cabinet unless he closes the door." (St. Br. 34-35). This argument ignores the state of the cabinet when Officer Liebich saw it and the fact that the cabinet enjoyed the extra layer of protection inside Casey's home. *Florida v. Jardines*, 569 U.S. 1, 6 (2013) ("[W]hen it comes to the Fourth Amendment, the home is first among equals.")

When assessing whether or not a privacy expectation is reasonable, this Court asks whether the defendant, "by his conduct, has 'exhibited an actual (subjective) expectation of privacy.'" *People v. Neal*, 109 Ill. 2d 216, 221 (1985) (quoting *Smith v. Maryland*, 442 U.S. 735, 740 (1979)). In other words, the question is whether the defendant "has shown that 'he seeks to preserve [something] as private.'" *Smith*, 442 U.S. at 740 (brackets in original) (quoting *Katz v. United States*, 389 U.S. 347, 351 (1967)). In answering this question, "it is useful to consider whether there are objective manifestations of the claimed privacy interest," such as whether Casey availed himself of any feasible or readily available "safeguards" to protect his privacy. *People v. Janis*, 139 Ill. 2d 300, 314 (1990). Chaining and padlocking a cabinet is one such safeguard.

In his opening brief, Casey relied upon cases from other jurisdictions that illuminate how different courts have handled cases where there are clearly

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communicated privacy interests, but an officer found a way around them. First, in *State v. Tarantino*, 322 N.C. 386, 390 (1998) (cert denied), the North Carolina Supreme Court held a small crack in the exterior of a commercial building did not destroy the privacy expectations expressed by padlocking the front door, boarding up the windows, and nailing shut some doors. The State attempts to distinguish this case by arguing that "[r]equiring that people who wish to maintain a reasonable expectation of privacy in a building seal every crack and crevice in the building's exterior is unreasonable; requiring that people who wish to maintain a reasonable expectation of privacy in a cabinet close the door is not." (St. Br. 35-36). Once again, the State's argument is premised on the idea that the cabinet was "open." Yet, the trial exhibits tell a different story. As John Adams once said, "Facts are stubborn things." John Adams, "Argument for the Defense in the Boston Massacre Trial," 3-4 December 1770, in The Adams Papers (Library of Congress). The State repeatedly calling the cabinet "open," cannot change the facts in this case.

Second, in *State v. Fortmeyer*, 178 Or. App. 485, 492 (2001), the Oregon Court of Appeals held that even though officers could view the interior of the residence from a common area, the interior was not in plain view because "to find strangers, on their knees, attempting to peer through what appears to be a covered basement window, would be suspicious, uncommon, and unacceptable in our society." First, the State argues that *Fortmeyer* should not be considered because Oregon courts addresses constitutional issues through its State constitution before looking at the federal constitution, while Illinois does the opposite. (St. Br. 36-37). Nevertheless, even if the holding in *Fortmeyer* involved the Oregon Constitution, the underlying reasoning is still persuasive in interpreting the Fourth Amendment.

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The State next argues that *Fortmeyer* is not informative because, unlike the officers in that case, Officer Liebich did not have to assume a contorted position. (St. Br. 37). While it is unclear exactly what posture Officer Liebich had to assume to peer into the gap, he testified that he would need to see a picture of the cabinet taken from an angle to see the gap in the cabinet. (R. 90). Defendant's Exhibit 1, pictured below, is taken from an angle and yet it too does not show a clear view into the cabinet. (Sup E. 9).

As in *Fortmeyer*, Officer Liebich had to observe Casey's clearly communicated privacy interests and somehow position himself to thwart them. Just as no one would expect to see officers attempting to peer through a partially-covered basement window, no one would expect a guest in one's home, invited or otherwise, to be shining a flashlight into a one-inch gap in an otherwise closed and locked cabinet.

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Lastly, the cases the State relies on are unpersuasive. (St. Br. 23-24). They all exhibit an officer using a flashlight while operating within the scope and license of their authorized intrusion. See e.g., *People v. Bombacino*, 51 Ill.2d 17, 22 (1972) (while looking for a murder suspect, an officer saw a bloody baseball bat through the open window of the suspect's vehicle parked in the suspect's driveway); *People v. Echols*, 2024 IL App (2d) 220281-U, ¶ 109 (parole officers were checking on a parolee when they saw incriminating evidence through her open bedroom door); *United States v. Law*, 384 F. App'x 121, 123-24 (3d Cir. 2010) (following the report of a domestic disturbance involving a gun, officers noticed a large amount of money in a bag that the occupants were fighting over). These cases merely support the notion that a flashlight does not transform an otherwise reasonable search into an unreasonable one. Here, the search was not unreasonable simply because a flashlight was used. Still, the fact that a flashlight was needed to see inside the cabinet is another factor showing that the contents of the cabinet were not in "plain view." Only by the officer ignoring social norms and circumventing expressly-conveyed indications of privacy could the officer see the items.

As the State points out, "when police 'resort to the extraordinary step of positioning themselves where [no one] would ordinarily be expected to be,'" an observation from that vantage violates a reasonable expectation of privacy and "'constitutes a Fourth Amendment search.'" (St. Br. 33) (citing 1 W. Lafave, Search and Seizure § 2.3(c)). The State has not cited any case law resembling the facts here, where an officer was using a flashlight in an already well-lit room to look into a closed container that was obviously locked. No one would ordinarily expect guests in their home to shine flashlights into their locked cabinets. As such, the

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use of the flashlight in this case was unreasonable. Therefore, the search was not justified by the plain view doctrine.

B. Officer Liebich's exploration of the clearly locked kitchen cabinet was not just justified by his role as a community caretaker or emergency responder because, within perhaps less than a minute of him entering Casey's home he had to abandon those roles in order to conduct his criminal investigation of the chained and locked cabinet.

Alternatively, the search violated the Fourth Amendment because Officer Liebich went beyond the scope and license of his role as a community caretaker. The State responds that Officer Liebich would have had to "shield his eyes" to avoid seeing inside of the cabinet. (St. Br. 31-32). However, he did not have to shield his eyes to avoid seeing the contents of the cabinet. As illustrated by the photographs in this case, when Officer Liebich turned around from the stove, he did not see the cabinet's contents but saw the Fourth Amendment equivalent of a "KEEP OUT" sign in the chain and padlock on the cabinet doors. (R. 81). His actions were unreasonable because he saw Casey's "KEEP OUT" sign and decided seeing what he was trying to hide was more important than resolving the ongoing emergency.

The State also argues that Liebich did not violate the scope and license of his warrantless entry simply because Liebich testified that he did not touch the cabinet. (St. Br. 24-30). This argument is essentially that an officer can do anything once he gains entry into someone's home unless he does not touch anything. Yet, the Second District held the opposite in *People v. Mikrut*, 371 Ill. App. 3d 1148 (2d Dist. 2007). There, the appellate court held that a plain view observation was made after an officer violated the scope and license of the community caretaking doctrine, even where he did not touch anything. *Id*. at 1141, 1153. Instead, the

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appellate court held "[w]hen officers have accomplished their caretaking purpose, they may not continue to expand the scope of an intrusion without additional justification." *Id.* at 1153. The officer in *Mikrut* did not violate his rights by touching anything or circumventing any communicated privacy interests; in fact he saw the gun sitting in an open closet. Still, a Fourth Amendment violation occurred because the officer did not need to be in that area to complete the duties that authorized the intrusion. *Id.* The same can be said when Liebich remained in the kitchen and searched the cabinet, which was unrelated to the ongoing emergency.

The cases the State cites rely upon to support this argument only hurt its position that Liebich's initial entry into the kitchen afforded him lawful presence when he looked into the cabinet. Unlike the instant case, most of the cases cited by the State involve searches outside of a home. For instance, the State compared the locked cabinet located in Casey's home to a car in a driveway with its windows opened *(People v. Bombacino*, 51 Ill. 2d 17, 22 (1972)), and smelling marijuana from a pipe located outside a home (*United States v. Shuck*, 713 F.3d 563, 568-70 (10th Cir. 2013)). (St. Br. 31). Neither of these cases show an officer completely deviating course from their scope and purpose for what they were doing. Instead, all of them support the notion that the plain view observation must occur when the officer is in the process of completing his relevant duty. Further, they do not take into account the added protection the Fourth Amendment provides to the home. *Jardines*, 569 U.S. at 6. The State also provides a hypothetical involving a public restroom that suffers the same fate. (St. Br. 33).

The State cites one case where an officer made a plain-view observation of the contents of a container within a residence. *State v. Elam*, 229 N.W.2d 664, 669 (Wis. 1971). However, that is where the similarities end. In stark contrast

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to Officer Liebich's actions, the Supreme Court of Wisconsin held that "it could not be meritoriously argued that the state unjustifiably maneuvered itself into a position to observe the evidence in plain view or that the discovery was anything but inadvertent." *Id.* at 622. There, the police officer, while executing an arrest warrant for people hiding inside the house, passed an open medicine cabinet. *Id.* at 671. The officer did not have to take any extra steps to see what was inside. Thus, he did not go beyond the scope and license the warrant afforded him.

Further, the State ignores the most relevant part of the reasoning used in *Elam*: "This court [has] recognized that a search, 'lawful at its inception, may become unlawful by broadening its intensity and scope unless further steps are taken that can independently satisfy constitutional requirements.'" *Id.* at 669. "The scope of a license—express or implied—is limited not only to a particular area but also to a specific purpose." *Jardines*, 569 U.S. at 9. Officer Liebich violated the Fourth Amendment here in this way by expanding the scope of his entry to include a criminal investigation of the cabinet.

Officer Liebich violated the scope and license of his warrantless entry to Casey's home. Rather than focusing his atttention on the gas leak, Officer Liebich initiated a criminal investigation into a closed and locked cabinet. Once he violated his role as a community caretaker, just as the appellate court held in *Mikrut*, any observation after that, plain or otherwise must be suppressed.

C. The State's standing argument was waived by failing to raise it in the trial and appellate court.

Casey's standing was not raised in the trial or appellate court. Yet, in its brief before this Court, the State argues for the first time that Casey did not establish standing to claim any privacy interest over the home he was living and

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sleeping in and the cabinet therein. (St. Br. 14). Contrary to its current position, the State in the circuit court repeatedly referred to the home as Casey's residence and the kitchen as belonging to Casey. (See e.g., R. 105, 127, 128). Further, the officers called to testify referred to the residence as Casey's. (R. 92, 96). The State attempts to get around this issue in a footnote, arguing that it is appropriate to raise it here "so long as the factual basis for such point was before the trial court." (St. Br. 14 n. 6). But, since the prosecutor at trial never raised this issue, but affirmatively agreed that this was Casey's house, the State now cannot take the opposite position. *People v. Franklin*, 115 Ill. 2d 328, 336 (1987) ("The general rule that a prevailing party may raise, in support of a judgment, any reason appearing in the record does not apply when the new theory is inconsistent with the position adopted below or the party has acquiesced in contrary findings"); see also *People v. O'Neal*, 104 Ill. 2d 399, 407 (1984) (the State forfeited an issue that it did not raise in the appellate court).

Even if this issue were not forfeited, the record does not support the State's claim. The only place in the record the State points to regarding the ownership of the town home was a statement made by the prosecutor to the judge. (St. Br. 2, 8, 9, 15 n. 7) (citing (R. 338)). Specifically, the prosecutor said, "[Casey] did tell the officers that it was his cousin's residence, but he had been living there for a few days." (R. 338). That is a far cry from the cases relied upon by the State, dealing with individuals who were merely present when the search took place. (St. Br. 15-16) (citing *People v. Delgado*, 231 Ill. App. 3d 117, 119 (1st Dist. 1992) (defendant did not have standing because he testified the house in question was not his and that he had never been there prior to his arrest); *People v. Nichols*, 2012 IL App (2d) 100028, ¶ 46 (defendant lacked standing over his friend's mother's

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shed where he was a mere intermittent social guest); *People v. McLaurin*, 331 Ill. App. 3d 498, 502 (3d Dist. 2002) (defendant lacked standing where "he was merely using the property for urinating")). Further, courts have long recognized that overnight guests at a private residence enjoy a reasonable expectation of privacy. *Minnesota v. Olson*, 495 U.S. 91, 98-99 (1990).

Finally, it must be noted that this is a peculiar argument for the State to make given the underlying charges. The State has already charged and convicted Casey of possession of the contents of the cabinet. Since the evidence was not found on Casey himself, the State needed to prove beyond a reasonable doubt that Casey had constructive possession of what was inside, meaning Casey had the "intent and capacity to maintain dominion and control over contraband." *People v. Horn*, 2021 IL App (2d) 190190, ¶ 39. Yet, now, the State argues:

> Although Liebich and Stanich both assumed that defendant was the resident of the townhome, see R92-93, 96, defendant presented no evidence that he owned the townhome, lived in the townhome, was staying as an invited guest in the townhome, or otherwise was legitimately present in the townhome.
>
> *Nor did Casey present any evidence that he used the kitchen cabinet; kept belongings in the cabinet; was the person who secured the cabinet with the lock and chain; or, if someone else had secured the cabinet, had a key to the lock.* (St. Br. 16) (emphasis added).

While the sufficiency of the evidence is not raised before this Court, if the State's above argument is correct, then it did not prove beyond a reasonable doubt that Casey constructively possessed the contents of the cabinet.

D. Conclusion

Either because the item was not in plain view or because Officer Liebich went beyond the scope of a community caretaking role, his search of the cabinet was illegal. As a result, the fruits of that search must be suppressed. Further,

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without the illegal search of the cabinet, there would have been no arrest or search warrant, therefore, all the evidence, including Casey's statement, must be suppressed as well. As the State would have been unable to continue the prosecution without the suppressed evidence, Casey's conviction must be reversed outright. See *People v. Payton*, 317 Ill. App.3d 909, 914 (3rd Dist. 2000) (noting that the State cannot prove unlawful possession charges without the controlled substances).

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CONCLUSION

For the foregoing reasons, Casey Robert Hagestedt, defendant-appellant, respectfully requests that this Court reverse outright his conviction for possession of a controlled substance.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages contained in the Rule 341(d) cover, the Rule 341(c) certificate of compliance, and the certificate of service, is 13 pages.

/s/Christopher McCoy
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NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On October 11, 2024, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Elgin, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

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