

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JEREMY FISHER,

Defendant-Appellee.

UNPUBLISHED

March 25, 2008

No. 276439

Wayne Circuit Court

LC No. 04-000969

Before: Talbot, P.J., and Cavanagh and Zahra, JJ.

Talbot, P.J. (*dissenting*)

I respectfully disagree with the majority opinion, as I believe the police were justified in entering defendant's home pursuant to the emergency aid and/or community caretaker exceptions to the warrant requirement. Consequently, I would reverse the trial court's order granting defendant's motion to suppress evidence.

Testimony demonstrated the police received a call regarding a disturbance in the area. While proceeding to the location, police were stopped by individuals that indicated a man was "going . . . crazy" at the identified location. Upon arrival at the scene, the officer observed the residence involved had several broken windows, apparently of recent origin. Also observed, within the immediate periphery of the house were damaged fence posts and a parked vehicle with a "smashed" front. In addition, the officer observed fresh blood on the hood and clothes inside of the vehicle, and a small amount of blood on one of the entry doors to the residence.

When the officer knocked on the door and inquired whether defendant needed assistance, he was met with profanity. Defendant neither confirmed nor denied the need for medical assistance. The officer observed, through a window, that defendant was walking around inside the residence while screaming and throwing items. The officer also testified that he believed he observed a cut on defendant's hand. The officer could hear items breaking but could not determine or identify what items defendant was throwing or their target. The officer further determined that one door to the residence was locked and another was barricaded by furniture.

Believing either defendant or someone else in the home might be injured or in need of assistance, the officer attempted to enter the home. He pushed open the barricaded front door approximately twelve to eighteen inches, which was sufficient for him to observe inside the residence. The officer saw defendant with a dog, seated in the bedroom, and at this point

defendant pointed a rifle at the officer who immediately retreated and did not attempt further entry.

The majority opinion appears to rely on the trial court's findings that the officer could not know or determine whether defendant had actually driven the damaged vehicle and whether the problems with the fence posts were of a recent occurrence in affirming the suppression order. In addition, it was noted that the amount of blood observed by the officer was not large and therefore did not "signal a likely serious [or] life-threatening injury." As a result, the majority concurred with the trial court's determination that "the situation the police witness described in this case did not rise to a level of emergency justifying the warrantless intrusion into a residence." However, this ruling appears to confuse the need for only a reasonable and articulable basis for entry under the emergency aid doctrine rather than exigent circumstances or with the necessity for probable cause in conducting a residential search when criminal activity is suspected. In response to this appeal, defendant further contends the police were not motivated by concern regarding the need to secure medical assistance based on the fact that they did not seek or call for a medical unit to the scene and awaited the procurement of a warrant before attempting another entry into the residence.

In accordance with the emergency aid exception to the search warrant requirement, police may enter into a dwelling or residence without a warrant if they reasonably believe that someone inside requires immediate aid or assistance. *People v Beuschlein*, 245 Mich App 744, 756; 630 NW2d 921 (2001). Police are required to "possess specific and articulable facts" supporting their determination of the need to render immediate aid, and may only do what is reasonably necessary to determine whether an individual actually requires assistance and to provide that assistance. *Id.* Unlike other recognized exceptions to the warrant requirement, under the emergency aid exception police are not required to have probable cause for their entry. *People v Davis*, 442 Mich 1, 11-12; 497 NW2d 910 (1993). Rather, it is deemed sufficient if the police possess a reasonable belief that an individual is in need of immediate assistance before entering the dwelling. *Id.* at 20.

I believe the testimony and evidence provided was sufficient to support the officer's attempted entry into defendant's home. Police had received a call regarding a disturbance at the location and en route citizens indicated an individual at the location was engaged in disruptive and suspect behavior. Upon arrival, the officer observed damage to a vehicle and structures on the property, evidence of recent blood and defendant behaving in a bizarre manner, screaming and throwing objects with broken windows to the residence. When police attempted to engage defendant and verbally ascertain his need for assistance they were met with expletives and received neither affirmation nor denial of the need for aid. Contrary to the majority's opinion, I believe police had sufficient reasons, which were articulated, to attempt entry into the home. There is no requirement, with regard to the emergency aid exception that the emergency solely constitute an immediate medical emergency. Given defendant's bizarre behavior, it was reasonable for officers to surmise that he might need medical or psychiatric intervention to prevent him from incurring injury. Further, the mere observation of an injury to defendant's hand is not dispositive of his need or lack of need for aid. The very fact that police observed an injury, coupled with defendant's behavior, made it reasonable to surmise that he may have additional injuries, which were not readily observable, particularly given the condition of the vehicle and fence posts surrounding the home. Defendant argues on appeal that the failure to

secure emergency medical services to the scene was inconsistent with assertions by police necessitating entry in accordance with the emergency aid exception. Contrary to this assertion, the physical withdrawal by police merely complied with the limitations imposed by this doctrine to intrude no further than was reasonably necessary to ascertain defendant's physical condition was such that the provision or need for medical intervention could be delayed.

In addition, I would assert that the actions of police were also justified in accordance with the community caretaking exception as recognized in *Davis*. *Davis, supra* at 20-26. The Court indicated that the emergency aid exception comprised an aspect of the more general "community caretaking functions" routinely engaged in by police. *Id.* at 25. The community caretaking function has been defined as encompassing "a variety of functions" that are "separate" and distinct from police "duties to investigate and solve crimes." *Id.* at 20. Notably, "[w]hen police, while performing one of these functions, enter into a protected area and discover evidence of a crime, this evidence is often admissible." *Id.* The *Davis* Court opined "that rendering aid to persons in distress is one of the community caretaking functions of the police" and "that entries made to render aid to a person in a private dwelling were part of the community caretaking function." *Id.* at 23. Contrary to defendant's assertion, the application of this doctrine does not require or necessitate that police be responding to known or suspect criminal activity before acting or intervening.

Given the reports made to police and their own observation of defendant's bizarre and oppositional behavior, along with the circumstantial physical evidence of injury or accident, it was neither unreasonable nor unjustified for police to attempt to enter defendant's home to intervene and determine the severity of his behavior and whether it was escalating and constituted an endangerment to himself or someone else, albeit heretofore unidentified or undetected, as part of their routine community caretaking functions. As a result, I would reverse the trial court's order suppressing the evidence subsequently obtained by police.

/s/ Michael J. Talbot