STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED March 16, 2010
v	No. 287459 Oakland Circuit Court
MARK SLAUGHTER, Defendant-Appellee.	LC No. 2007-218038-FH

Before: Meter, P.J., and Borrello and Shapiro, JJ.

METER, J. (*dissenting*).

Because I believe that the firefighters in this case acted reasonably and within the proper parameters of the "community caretaker" exception to the search warrant requirement, I respectfully dissent. I would reverse the trial court's order of suppression and remand this case for further proceedings.

The trial court, in its opinion granting the motion to suppress, noted the testimony by Lieutenant Michael Schunck of the Royal Oak Fire Department that Kathleen Tunner had told him that (1) water was running down within a common wall between the two apartments in question and (2) there were shared electrical panels in the basement at the bottom of the wall. The trial court also noted Schunck's testimony that water running into an electrical box can initiate a fire.

In making its legal conclusions, the court indicated that the prosecution was relying on the "community caretaker" exception to the search warrant requirement, as set forth in *People v Davis*, 442 Mich 1, 20; 497 NW2d 910 (1993), as follows:

> The police perform a variety of functions that are separate from their duties to investigate and solve crimes. These duties are sometimes categorized under the heading of "community caretaking" or "police caretaking" functions. When police,[1] while performing one of these functions, enter into a protected area and discover evidence of a crime, this evidence is often admissible.

[1] I agree with the majority that this doctrine can encompass the actions of firefighters as well as (continued…)

The trial court then stated:

> The [*Davis*] Court . . . listed several duties and functions which have been found to fall into the exception. However, the Court did not list under those exceptions anything related to the investigation of a possible fire hazard. While this list is not exclusive, it is demonstrative, and the holding in [*People v Tyler*, 399 Mich 564; 250 NW2d 467 (1977)] is controlling in the case at bar.

The trial court improperly analyzed *Tyler* and *Davis*. The trial court found that *Tyler*, 399 Mich 564, is controlling in the case at bar. However, *Tyler* is not controlling here because it involved a distinct factual situation. It involved "whether the authorities may enter fire-damaged premises without a warrant after the fire is extinguished for the purpose of investigation and, if discovered, collection of evidence of arson." *Id*. at 569. Such a situation is plainly not at issue here.

In *Davis*, 442 Mich at 22-23, the Supreme Court stated:

> Federal and state courts have included a variety of police activities under the heading of community caretaking functions. Courts have held that impoundment of automobiles and inventory searches of them, . . . responding to missing vehicle complaints, investigating noise complaints, and searching an unconscious person for identification are community caretaking functions.
>
> The people assert that rendering aid to persons in distress is one of the community caretaking functions of the police. We agree. Indeed, this Court already stated that entries made to render aid to a person in a private dwelling were part of the community caretaking function . . . .

The *Davis* Court further stated that "the community caretaker exception is only invoked when the police are not engaged in crime-solving activities."

As noted by the trial court, the examples listed by the *Davis* Court were not meant to be exhaustive. Contrary to the trial court's conclusion, the actions undertaken by the firefighters in this case were analogous to something such as "investigating [a] noise complaint[]." The police were not attempting to solve a crime but were attempting to avert a possible fire hazard. The testimony was clear that (1) Tunner informed the firefighters about water running within a wall containing electrical panels and (2) water running into an electrical panel can start a fire. Under these circumstances, the firefighters were within their rights, under the community caretaking exception, to enter the apartment in question.

The majority contends that there is insufficient evidence that the firefighters acted reasonably here because it is not clear whether, before entering defendant's apartment, they examined or attempted to remedy the situation at Tunner's apartment. I cannot agree with this conclusion. The firefighters were faced with a possible emergency situation and they needed to

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(…continued)

police.

make quick judgments about what to do in order to avoid a potential fire. Moreover, the following colloquy occurred between the prosecutor and Schunck at the suppression hearing:

> *Q.* All right. When you went into – let me ask you this. Even – lieutenant, even if you would have been able to shut the water off from the outside and shut down the entire complex, would you in your responsibility as a firefighter still have gone inside the [defendant's] house to make sure that the water hadn't already began – begun to affect the electrical process?
>
> *A.* Oh, yes, ma'am. Absolutely.
>
> * * *
>
> *Q.* My next question is, and why would you have gone inside the apartment even if you had turned off the water from the outside?
>
> *A.* We have to investigate these types of calls to the fullest extent that we possibly can because legal – legal responsibility when the fire department shows up is on the city of Royal Oak. So, I am there [sic] agent, if you will.
>
> *THE COURT*: Sure.
>
> *THE WITNESS*: And I can't leave a situation until I am sure in my picture of it that it's totally safe. . . .

In my opinion, this testimony makes clear through implication that entering defendant's apartment would have been a necessity *regardless* of whether the firefighters first investigated and remedied the situation in Tunner's apartment. Indeed, even if the water to the *whole building* had been shut off, the firefighters would still have needed to make sure that nothing dangerous (such as, possibly, a smoldering fire) was occurring in defendant's unit. I simply do not agree with the majority's "reasonableness" analysis. The firefighters here did act reasonably and I would reverse the trial court's decision to suppress the evidence in question.

I would reverse the trial court's order and remand this case for further proceedings.

/s/ Patrick M. Meter