STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 29, 2016
v RALPH WALTER WIKTOR, Defendant-Appellant.	No. 333517 Oakland Circuit Court LC No. 2015-256851-FH

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v RANEE WIKTOR, Defendant-Appellant.	No. 333524 Oakland Circuit Court LC No. 2015-256846-FH

Before: SERVITTO, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendants appeal by leave granted[1] orders denying their motions to suppress in these consolidated interlocutory appeals. We affirm.

At approximately 5:00 p.m. on August 21, 2013, defendant Ranee Wiktor called 911 to report that she and her husband, defendant Ralph Wiktor, had a "very heated argument." Because of the argument, she left their home in Ralph's car, and she was concerned that he would report the vehicle as stolen. Ranee also told the 911 operator that Ralph called her mother and made several threats, purportedly saying he was going to kill Ranee, that Ranee would end

[1] *People v Ralph Wiktor*, unpublished order of the Court of Appeals, entered July 21, 2016 (Docket No. 333517); *People v Ranee Wiktor*, unpublished order of the Court of Appeals, entered July 21, 2016 (Docket No. 333524).

up in the morgue, or that he was going to call the police. Ranee said that Ralph was crazy and had an anxiety disorder for which he was medicated. In response to the operator's questions, Ranee indicated that their fight had not been physical and that they did not own any weapons. Ranee said she did not intend to return home and repeatedly said she was going to drive to the police station to file a report. Before ending the call, the 911 operator asked, "Are you on your way in now?" and Ranee answered affirmatively.

Five hours later, after Ranee failed to appear at the station, four Troy police officers were dispatched to defendants' home to perform a welfare check. When they arrived, they split into two teams: Officer Warzecha went to the front door with his partner to attempt to make contact with Ranee, and Sergeant Andrew Satterfield walked around the perimeter of defendants' home with Officer Jeff Strong to search for signs of distress. While they were in defendants' backyard, Sergeant Satterfield saw what appeared to be a marijuana growing operation in defendant's basement. The Troy Police Department obtained a search warrant for the home and, upon executing the search warrant on August 22, 2013, seized controlled substances from the home. As a result of the evidence obtained from defendants' home, defendants were both charged with one count each of manufacturing between 20 and 200 marijuana plants, MCL 333.7401(2)(d)(ii), possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), possession of dihydrocodeinone, MCL 333.7403(2)(b)(ii), and possession of zolpidem, MCL 333.7403(2)(b)(ii).

Defendants filed motions to suppress the evidence seized from their home, arguing that the officers' initial warrantless search of the curtilage of their home violated their constitutional rights to be free from unreasonable search and seizure. Defendants asserted that the officers were present on their property to conduct a "knock and talk," the legality of which was premised on the implied license given to ordinary citizens, which typically permits visitors to approach the entrance of a home to knock on the door and briefly wait for permission to remain on the property. According to defendants, the officers exceeded the scope of the implied license granted to ordinary citizens when they circled the curtilage of the home and peered into windows. Thus, because the officers' conduct went beyond the activities of a proper knock and talk procedure, they essentially conducted an unlawful, warrantless search of defendants' home. The trial court denied defendants' motions, and we granted leave to appeal.

On appeal, defendants argue that the trial court erred when it denied their motions because the police officers first saw the marijuana plants while conducting a warrantless search of the curtilage of defendants' home. According to defendants, the trial court essentially created a new "domestic violence run" exception to the general rule requiring a warrant for such searches.

We review de novo a trial court's ruling on a motion to suppress, as well as its application of constitutional principles. *People v Henry (After Remand)*, 305 Mich App 127, 137; 854 NW2d 114 (2014). Factual findings are reviewed for clear error. *Id*. "A finding is clearly erroneous if it leaves this Court with a definite and firm conviction that a mistake was made." *People v Shipley*, 256 Mich App 367, 373; 662 NW2d 856 (2003).

Both the United States and Michigan Constitutions guarantee the right to be free from unreasonable search and seizure. US Const, Am IV; Const 1963, art 1, § 11; *Henry (After*

Remand), 305 Mich App at 137. It is a "basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable." *Groh v Ramirez*, 540 US 551, 559; 124 S Ct 1284; 157 L Ed 2d 1068 (2004) (internal quotation marks and citation omitted). However, there are a number of exceptions under which warrantless searches are considered reasonable and, therefore, constitutional. *People v Hill*, 299 Mich App 402, 405-406; 829 NW2d 908 (2013). Importantly, the "touchstone of the Fourth Amendment is reasonableness," which is measured by examining the totality of the circumstances. *People v Williams*, 472 Mich 308, 314; 696 NW2d 636 (2005). The issue raised by defendants on appeal requires this Court to consider the constitutional implications of the "knock and talk" procedures employed in this case and the community caretaker exception to the general rule against warrantless searches of the home.

The constitutionality of a knock and talk was first recognized in Michigan in *People v Frohriep*, 247 Mich App 692; 637 NW2d 562 (2001). This Court explained the knock and talk procedure as:

> [a] law enforcement tactic in which the police, who possess some information that they believe warrants further investigation, but that is insufficient to constitute probable cause for a search warrant, approach the person suspected of engaging in illegal activity at the person's residence (even knock on the front door), identify themselves as police officers, and request consent to search for the suspected illegality or illicit items. [*Id*. at 697.]

While the *Frohriep* Court rejected the notion that all knock and talks are *per se* unconstitutional, reasoning that they are akin to "ordinary citizen contact," it cautioned that the procedure can raise constitutional implications in some cases. *Id*. at 697-698, 701. "Thus, whenever the procedure is utilized, ordinary rules that govern police conduct must be applied to the circumstances of the particular case." *Id*. at 698-699. In other words, the constitutionality of the contact and any resulting search that arises from a knock and talk depends on its reasonableness. *Id*. at 699.

In *Frohriep*, this Court found the knock and talk at issue was reasonable because the police did nothing more than approach the defendant in his yard, explain that they had information suggesting that he had controlled substances on his property, and obtain the defendant's voluntary consent to search the premises. *Id*. at 701. By contrast, this Court found that the purported knock and talk procedure at issue in *People v Galloway*, 259 Mich App 634; 675 NW2d 883 (2003), violated the defendant's Fourth Amendment rights. In *Galloway*, the police received an anonymous tip that the defendant was growing marijuana in his backyard. *Id*. at 636. Acting on that tip, they conducted a helicopter flyover of the defendant's home and observed pots and potting materials, but no marijuana. *Id*. at 636-637. Shortly thereafter, a team of police officers arrived at the defendant's home and immediately entered the defendant's backyard, passing the front door and an individual in the side yard of the home. *Id*. at 641. The police proceeded directly to the area where they believed, based on the anonymous tip, that the defendant was growing marijuana and discovered a large number of marijuana plants. *Id*. The *Galloway* Court observed that the officers' conduct was closer to an investigative entry than the contact of ordinary citizens. *Id*. at 640. "Moreover, the alleged knock and talk procedure was

not used as a springboard to secure [the] defendant's permission for a search. Instead, it was used as a springboard to a plain view exception to the warrant requirement." *Id*.

Like the defendant in *Galloway*, defendants in this case argue that the police conduct on August 21, 2013, exceeded the scope of a proper knock and talk because their actions went beyond what would be expected from an ordinary citizen. To the extent that the police were conducting a knock and talk when they came to defendants' home, we agree. The area "immediately surrounding and associated with the home," which is known as the curtilage, is considered part of the home and entitled to the same level of constitutional protection. *Florida v Jardines*, 569 US ___; 133 S Ct 1409, 1414; 185 L Ed 2d 495 (2013). While Warzecha and his partner attempted to contact defendants at the front door, Satterfield and Strong walked around defendants' home, close enough that they were able to peer inside windows. The parties do not dispute that Satterfield and Strong were within the curtilage of defendants' home at the time. Notably, Satterfield and Strong both testified that they entered defendants' backyard for the purpose of searching for signs of distress or people in need of assistance. Thus, even if Warzecha and his partner were performing a proper knock and talk, it is clear that Satterfield and Strong were not looking for defendants in the hope of obtaining their consent to perform a search. Instead, Satterfield and Strong were engaging in an investigative search, rather than an attempt to initiate ordinary citizen contact.

However, even though Satterfield and Strong exceeded the scope of a constitutionally sound knock and talk, it does not necessarily follow that their conduct was constitutionally unreasonable. There are several well-established exceptions to the warrant requirement, including the community caretaker exception. *Hill*, 299 Mich App at 406. The community caretaker exception recognizes that police may be required to perform warrantless searches as part of their community caretaking function. *Id*. For this exception to apply, the police activity at issue must be unrelated to the officers' duty to investigate crimes. *Id*. This Court has found that rendering aid to a person in distress is a community caretaking function. *Id*., citing *People v Davis*, 442 Mich 1, 23; 497 NW2d 910 (1993). When the police enter a home for that purpose,

> [t]he police must be primarily motivated by the perceived need to render assistance or aid and may not do more than is reasonably necessary to determine whether an individual is in need of aid and to provide that assistance. An entering officer is required to possess specific and articulable facts that lead him or her to the conclusion that a person inside a home is in immediate need of aid. Proof of someone's needing assistance need not be ironclad, only reasonable. [*Hill*, 299 Mich App at 406 (internal quotation marks and citations omitted).]

When reviewing the police conduct for reasonableness, courts should consider the reasons that the police were engaged in a community caretaking function and the extent to which the police intruded into a protected area. *Id*., citing *People v Slaughter*, 489 Mich 302, 316; 803 NW2d 171 (2011).

This Court has found a warrantless entry into the defendant's home constitutionally reasonable under the community caretaker exception when the officers had specific and articulable facts from which they could conclude that the defendant was in need of aid, even though there was no evidence that definitively proved that there was a person inside the

residence who was in need of aid or assistance. *Hill*, 299 Mich App at 409-410. In *Hill*, two officers went to the defendant's home to perform a welfare check after a concerned neighbor reported that she had not seen the defendant for several days and that the defendant's car had not moved from his property during that period. *Id*. at 407. When the police arrived, an interior light in the home was on, there were several items of mail in the defendant's mailbox, a phonebook was sitting on the front porch, and the defendant's car was cold and covered with leaves. *Id*. The officers received no response when they knocked on the defendant's door and windows. *Id*. at 407-408. The officers entered the home to continue their search for the defendant and, while inside, discovered several marijuana plants growing in a bedroom closet. *Id*. at 408.

This Court reversed the lower court's order suppressing the evidence seized as a result of the officers' warrantless entry, reasoning that the officers' actions were constitutionally sound under the community caretaker exception. *Id*. at 409-410. According to the *Hill* Court, "The lack of definitive signs that defendant was present and in distress or danger did not negate the possibility that defendant was present and in need of aid, and the surrounding circumstances suggested that such was the case." *Id*. at 410. The *Hill* Court also considered the public policy implications presented by the circumstances before it:

> Imagine that the police officers had decided against entering defendant's house and that defendant was inside unconscious or otherwise unable to communicate and in critical need of medical attention as a result of a criminal act or physiological event. In such a scenario, if defendant had later died due to a lack of timely aid, the community uproar over the officers' failure to enter the home would be deafening, and public criticism regarding the lack of police action would be, in our view, reasonable and deserved in light of the surrounding circumstances. [*Id*. at 410-411.]

Given these considerations, the Court also opined that the evidence seized by the officers in *Hill* was admissible under the good-faith exception to the exclusionary rule, even if the officers' search had not been a reasonable exercise of their community caretaking duties. *Id*. at 411. The *Hill* Court explained that the police conduct at issue—entering a home in a good-faith effort to check on the welfare of a citizen—was not the type of conduct that the courts should attempt to deter by invoking the exclusionary rule. *Id*. at 414-415.

In this case, Satterfield and Strong possessed specific and articulable facts that led them to believe that Ranee may have been in the home and in need of immediate aid or assistance. As a result of Ranee's 911 call earlier in the day, the police were aware that Ranee and Ralph had a heated argument, which was serious enough for Ranee to feel as though she needed to leave their shared home. Although Ranee indicated that she had not been physically harmed in the course of the domestic dispute, she explained that Ralph had threatened her life when he spoke with her mother by phone. Moreover, she indicated at least three times during the 911 call that she would come into the police station to file a report about the incident. After Ranee failed to arrive several hours later or answer the phone when a 911 operator attempted to call her, officers were dispatched to her home to conduct a welfare check.

Upon arriving at defendants' home, Warzecha and his partner went to the front door to try to contact Ranee, while Satterfield and Strong walked around the perimeter of the house in search of signs of distress within the home. Although Warzecha indicated that he saw a woman watching television inside the home when he neared the front door, he also explained that they did not know how many people were inside the home or whether the woman he saw was, in fact, Ranee. Additionally, neither Satterfield nor Strong saw the unidentified woman before they began their search. Given the dynamic and volatile nature of domestic dispute situations, as well as Ranee's report concerning Ralph's threats and anxiety disorder, it was reasonable for the officers to continue their welfare check to ensure that Ranee was unharmed. As was the case in *Hill*, the lack of obvious, visible signs of distress at defendants' home did not negate the fact that the officers had specific and articulable facts that led them to reasonably believe that Ranee may have been inside the home and in need of aid.

At the suppression hearing, the defense made much of the fact that Ranee indicated that she had not been physically harmed and that she did not intend to return home that evening. These considerations do not undermine the reasonableness of the officers' concern for Ranee's safety because she also reported that Ralph threatened her life, albeit indirectly, and that she intended to come to the police station. When she failed to arrive at the station, it was reasonable for the police to infer that Ranee's plans had changed, that she may have returned home, and that her dispute with Ralph may have resumed and escalated. This inference is also supported by the fact that the police were unable to reach Ranee at the phone number she provided to the 911 operator. Considering the totality of the circumstances, it is clear that the officers acted reasonably under the community caretaker exception because they were motivated by the perceived need to render assistance and they limited the level of intrusion to that which was necessary to ensure that Ranee had not been harmed.

Defendants argue that the trial court erred when it denied their motions to suppress because it agreed with their argument that the community caretaker exception did not apply to the officers' search, but then "carved out a new exception to the Fourth Amendment" applicable to domestic violence runs. This argument lacks merit. Admittedly, the trial court indicated that the law regarding "pure caretaking functions" and "strictly welfare checks" would not justify the officers' search. While it is unclear precisely what the trial court believed to be "pure caretaking functions" or "strictly [a] welfare check," the trial court considered the case before it to be distinguishable and went on to explain that, under the totality of the circumstances, the officers' actions were objectively reasonable. Moreover, its analysis of the officers' conduct was consistent with the community caretaker exception, as applied when officers enter a protected area for the purpose of locating a person in need of emergency aid.

Finally, the *Hill* Court's reasoning regarding the good-faith exception to the exclusionary rule is equally applicable to the circumstances in this case. The exclusionary rule was not created to redress the injury arising from a violation of a defendant's constitutional rights; it was established to deter intentional police misconduct. *Id*. at 412, citing *Davis v United States*, 564 US 229, 236-237; 131 S Ct 2419; 180 L Ed 2d 285 (2011). As such, the exclusionary rule should only be invoked in situations where suppression of evidence would actually serve the deterrence purpose of the rule and not in cases where the police act with a reasonable, good-faith belief that their conduct was lawful. *Hill*, 299 Mich App at 412-413, citing *Davis*, 564 US at 237-238. Moreover, even where suppression of evidence would deter police misconduct, courts

should also consider the social cost of excluding otherwise reliable, trustworthy evidence. *Hill*, 299 Mich App at 412, citing *Davis*, 564 US at 237. When conducting this cost-benefit analysis, the focus of the inquiry should be on the "flagrancy of the police misconduct" involved in the case, and whether the misconduct demonstrated a deliberate, reckless, or grossly negligent disregard for the defendant's constitutional rights. *Hill*, 299 Mich App at 413, citing *Davis*, 564 US at 238.

Here, there was no evidence that the Troy police officers willfully violated defendants' constitutional rights by engaging in deliberate, reckless, or grossly negligent misconduct. When they were dispatched to perform the welfare check, the officers had no reason to suspect that they would encounter evidence of controlled substance offenses at defendants' home. Instead, acting on Ranee's own report, they sought to ensure that she had not suffered harm. In doing so, they did not simply burst unannounced into defendants' home without assessing the situation or attempting to contact her by other means. The police first waited for Ranee to arrive at the police station, as she indicated she would do. When she failed to arrive, the police attempted to reach her by phone, to no avail. Left with no option but checking on Ranee's welfare at her home, two officers tried to contact Ranee at the front door, while two other officers walked around the home in search of signs of distress. Had either defendant actually been in need of aid at the time, the officers' actions would have been applauded. As this Court observed in *Hill*, "[t]his is not the type of police conduct we should be attempting to deter." *Hill*, 299 Mich App at 414. Accordingly, even if the officers' search had not been justified under the community caretaker exception to the warrant requirement, exclusion of the evidence seized from defendants' home would not be an appropriate remedy under these circumstances.

Affirmed.

/s/ Deborah A. Servitto
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause