Rel: November 10, 2022



# SUPREME COURT OF ALABAMA

## OCTOBER TERM, 2022-2023

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## 1210155

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**Ex parte Charlie James Byrd**

**PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS**

**(In re: Charlie James Byrd**

**v.**

**State of Alabama)**

**(Montgomery Circuit Court: CC-18-1452; Court of Criminal Appeals: CR-20-0609)**

BOLIN, Justice.

Charlie James Byrd petitioned this Court for a writ of certiorari to review whether the Court of Criminal Appeals erred in affirming the Montgomery Circuit Court's judgment denying his motion to suppress certain evidence. We granted certiorari review, and, for the reasons discussed below, we affirm the judgment of the Court of Criminal Appeals.

Facts and Procedural History

After being indicted by a Montgomery County grand jury for unlawful possession of a controlled substance -- delta-9-tetrahydrocannabinol (synthetic marijuana) -- a violation of § 13A-12-212, Ala. Code 1975, Byrd filed a motion to suppress the evidence that was the basis of his indictment on the ground that it was the product of an unlawful search and seizure. Following a hearing, the circuit court denied the motion on September 3, 2019. On February 10, 2020, before pleading guilty, Byrd specifically reserved the right to appeal the circuit court's denial of the motion to suppress. On May 13, 2021, the circuit court sentenced Byrd to 60 months in prison, which sentence was suspended, and he was ordered to serve 12 months in the Montgomery County jail followed by 24 months of supervised probation. Byrd timely

exercised his right to appeal to the Court of Criminal Appeals. On October 8, 2021, the Court of Criminal Appeals affirmed Byrd's conviction. Byrd v. State, [Ms. CR-20-0609, Oct. 8, 2021] ___ So. 3d ___ (Ala. Crim. App. 2021). After that court overruled Byrd's application for a rehearing, he petitioned this Court for a writ of certiorari. We granted Byrd's petition to address whether the Court of Criminal Appeals erred in affirming the circuit court's denial of Byrd's motion to suppress because the State had failed to establish sufficient grounds to justify the warrantless search that led to the discovery of the evidence that Byrd sought to suppress.

The evidence produced at the suppression hearing tended to establish the following: On February 23, 2018, Byrd telephoned 911 because he was having chest pains. A safety alert was attached to Byrd's address, which required that the police be dispatched to ensure that the area was safe for medical personnel to enter. Two officers from the Montgomery Police Department, including Officer Cain Gray, responded to make sure that it was safe for medics from the fire department to assist Byrd. Once the officers determined that the area was safe, medics began assisting Byrd. Officer Gray testified:

> "The fire medics had showed up, and they were dealing with Mr. Byrd, I guess getting his vital signs and stuff like that. And then originally he wanted to go with the medics, so they were waiting for the transport ambulance company to come. And then someone had said something about grabbing his jacket. And it was draped over the -- the porch, so I went up and grabbed it and checked it for weapons or knives or anything like that, and I had found a pill bottle. And then --
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> "....
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> "So I had felt the pill bottle. And I know he was complaining. I think, about chest pain. So I had removed [the pill bottle] to make sure he wasn't on any medications and gave it over to the medics, because they're going to need to know that when they transport him to the hospital.
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> "And there wasn't a label on it. And there was -- it looked like -- a little bit like marijuana, but it didn't smell like it."

Officer Gray stated that, after he had pulled the pill bottle from Byrd's jacket, Byrd, who until then had been "peaceful and calm," became "upset" and "ended [up] ... denying the medics" and did not go to the hospital. Officer Gray then arrested Byrd for possession of a controlled substance.

Standard of Review

It is well settled that, in reviewing a decision of a trial court on a motion to suppress evidence in a case in which the facts are not in dispute, the appellate court applies a de novo standard of review. State

v. Gargus, 855 So. 2d 587, 590 (Ala. Crim. App. 2003). The facts surrounding the search of Byrd's jacket, which was located on the porch of his house, are undisputed. Therefore, the proper standard of review in this case is de novo.

Discussion

Byrd argues that the Court of Criminal Appeals erred in affirming the circuit court's denial of his motion to suppress because, he says, the emergency-aid exception permitting a warrantless search did not apply. The Fourth Amendment to the United States Constitution, made applicable to the States through the Due Process Clause of the Fourteenth Amendment, protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."

The emergency-aid exception was first mentioned in dicta in Johnson v. United States, 333 U.S. 10, 14-15 (1948), wherein Justice Jackson, delivering the opinion of the Court, stated that "[t]here are exceptional circumstances in which, on balancing the need for effective law enforcement against the right of privacy, it may be contended that a magistrate's warrant for search may be dispensed with." In McDonald

v. United States, 335 U.S. 451, 454 (1948), the United States Supreme Court outlined a possible emergency situation, such as "where the officers, passing by on the street, hear a shot and a cry for help and demand entrance [to a residence] in the name of the law," in which a warrantless search could be permissible. In Mincey v. Arizona, 437 U.S. 385, 392-94 (1978), the United States Supreme Court stated:

> "We do not question the right of the police to respond to emergency situations. Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. Similarly, when the police come upon the scene of a homicide they may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises. Cf. Michigan v. Tyler, ... 436 U.S. [499], at 509-510 [(1978)]. 'The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.' Wayne v. United States, 115 U.S. App. D.C. 234, 241, 318 F.2d 205, 212 [(1963)] (opinion of Burger, J.). And the police may seize any evidence that is in plain view during the course of their legitimate emergency activities. Michigan v. Tyler, supra, 436 U.S., at 509-510; Coolidge v. New Hampshire, 403 U.S. [443], at 465-466 [(1971)].
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> "But a warrantless search must be 'strictly circumscribed by the exigencies which justify its initiation,' Terry v. Ohio, 392 U.S. [1], at 25-26 [(1968)] ….
>
> "….

> "… The investigation of crime would always be simplified if warrants were unnecessary. But the Fourth Amendment reflects the view of those who wrote the Bill of Rights that the privacy of a person's home and property may not be totally sacrificed in the name of maximum simplicity in enforcement of the criminal law. See United States v. Chadwick, 433 U.S. 1, 6-11 [(1977)]. For this reason, warrants are generally required to search a person's home or his person unless 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment. McDonald v. United States, 335 U.S. 451, 456 [(1948)], Johnson v. United States, 333 U.S. 10, 14-15 [(1948)]."

(Footnotes omitted.)

In Brigham City v. Stuart, 547 U.S. 398, 403-04 (2006), the United States Supreme Court held that the emergency-aid exception allows police to make a warrantless entry into a home to provide emergency aid to an injured occupant or to protect an occupant from imminent injury, stating:

> "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 U.S. 551, 559 (2004) (quoting Payton v. New York, 445 U.S. 573, 586 (1980); some internal quotation marks omitted). Nevertheless, because the ultimate touchstone of the Fourth Amendment is 'reasonableness,' the warrant requirement is subject to certain exceptions. Flippo v. West Virginia, 528 U.S. 11, 13 (1999) (per curiam); Katz v. United States, 389 U.S. 347, 357 (1967). We have held, for example, that law enforcement officers may make a warrantless entry onto

> private property to fight a fire and investigate its cause, Michigan v. Tyler, 436 U.S. 499, 509 (1978), to prevent the imminent destruction of evidence, Ker v. California, 374 U.S. 23, 40 (1963) (plurality opinion), or to engage in '"hot pursuit"' of a fleeing suspect, United States v. Santana, 427 U.S. 38, 42, 43 (1976). '[W]arrants are generally required to search a person's home or his person unless "the exigencies of the situation" make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.' Mincey v. Arizona, 437 U.S. 385, 393-394 (1978).
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> "One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury. '"The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency."' Id., at 392 (quoting Wayne v. United States, 318 F.2d 205, 212 (C.A.D.C. 1963) (Burger, J.)); see also Tyler, supra, at 509. Accordingly, law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury. Mincey, supra, at 392; see also Georgia v. Randolph, ... [547 U.S. 103,] at 118 [(2006)] ('[I]t would be silly to suggest that the police would commit a tort by entering ... to determine whether violence (or threat of violence) has just occurred or is about to (or soon will) occur')."

Applying its holding in Stuart, the United States Supreme Court in Michigan v. Fisher, 558 U.S. 45 (2009), held that when police officers responded to a complaint of a disturbance and were directed to a certain address by people who said that a man was "'going crazy,'" id. at 45; found at that address a pickup truck with its front smashed, blood on the

hood of the truck, as well as on clothes inside the truck and on a door to the house, and broken house windows; and, through a window, saw a man, later identified as Jeremy Fisher, screaming and throwing things, those circumstances "sufficed to invoke the emergency aid exception that it was reasonable to believe that Fisher had hurt himself (albeit nonfatally) and needed treatment that in his rage he was unable to provide, or that Fisher was about to hurt, or had already hurt, someone else," id. at 49. The Supreme Court in Fisher held that the lower court had erred in reaching a contrary result by "replac[ing] [an] objective inquiry into appearances with its hindsight determination that there was in fact no emergency." Id.

In Kentucky v. King, 563 U.S. 452, 460 (2011), the United States Supreme Court stated:

> "This Court has identified several exigencies that may justify a warrantless search of a home. See Brigham City [v. Stuart], 547 U.S. [398], at 403 [(2006)]. Under the 'emergency aid' exception, for example, 'officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.' Ibid.; see also, e.g., [Michigan v.] Fisher ... [558 U.S. 45], at 49 [(2009)] (upholding warrantless home entry based on emergency aid exception). Police officers may enter premises without a warrant when they are in hot pursuit of a fleeing suspect. See United States v. Santana, 427 U.S. 38, 42-43 (1976). And -- what is relevant here -- the need 'to

> prevent the imminent destruction of evidence' has long been recognized as a sufficient justification for a warrantless search. Brigham City, supra, at 403; see also Georgia v. Randolph, 547 U.S. 103, 116, n.6 (2006); Minnesota v. Olson, 495 U.S. 91, 100 (1990)."

There has been debate among courts on how to categorize the emergency-aid exception. See Macdonald v. Town of Eastham, 946 F. Supp. 2d 235, 242 (D. Mass. 2013)(discussing the "widely-shared confusion between and among the distinct doctrines of community caretaking, emergency aid, and exigent circumstances"); Commonwealth v. Livingstone, 644 Pa. 27, 57, 174 A.3d 609, 626-27 (2017) ("The community caretaking doctrine has been characterized as encompassing three specific exceptions: the emergency aid exception; the automobile impoundment/inventory exception; and the public servant exception, also sometimes referred to as the public safety exception."); State v. Neighbors, 299 Kan. 234, 328 P.3d 1081 (2014)(addressing the jumbling of community caretaking function and the emergency aid exception); State v. Deneui, 775 N.W.2d 221, 232 (S.D. 2009)("Some courts treat these exceptions [to the warrant requirement] interchangeably. Others declare that the community caretaker exception applies, but then use law applicable to one of the other exceptions, such

as the emergency doctrine. Several courts have also held that the emergency aid doctrine is a subcategory of the community caretaker exception, while the emergency doctrine is a subcategory of the exigent circumstances exception.").

In the present case, the Court of Criminal Appeals cited People v. Lewis, 363 Ill. App. 3d 516, 526, 845 N.E.2d 39, 49, 300 Ill. Dec. 618, 628 (2006), for the proposition that a search conducted while providing emergency assistance is an exercise of the police's community-caretaking function and, thus, is an exception to the warrant requirement. The Illinois Court of Appeals in Lewis relied on Cady v. Dombrowski, 413 U.S. 433 (1973). Cady held that a warrantless search of an impounded vehicle (belonging to an off-duty police officer) for an unsecured firearm did not violate the Fourth Amendment. In reaching that conclusion, the United States Supreme Court noted that officers who patrol the "public highways" are often called to discharge noncriminal "community caretaking functions," such as responding to disabled vehicles or investigating accidents. 413 U.S. at 441.

More recently, the United States Supreme Court addressed the community-caretaking exception to the warrant requirement in Caniglia

v. Strom, 593 U.S. __, 141 S.Ct. 1596 (2021). In Caniglia, police officers entered the home of Edward Caniglia and seized his handguns on the morning after he had asked his wife to shoot him with one of the guns. Caniglia sued, claiming that the officers had violated the Fourth Amendment when they had entered his home and seized his handguns without a warrant. The federal district court had entered summary judgment in favor of the officers, and the United States Court of Appeals for the First Circuit had affirmed the judgment on the basis that the community-caretaking exception to the warrant requirement applied. The Supreme Court rejected the First Circuit Court of Appeals' reliance on Cady v. Dombrowski, supra, to "extrapolate[] a freestanding community-caretaking exception that applies to both cars and homes." Caniglia, 593 U.S. at ___, 141 S.Ct. at 1598. The Supreme Court vacated the judgment, noting that "[w]hat is reasonable for vehicles is different from what is reasonable for homes." 593 U.S. at ___, 141 S.Ct. at 1600. The Court explained:

> "We have ... held that law enforcement officers may enter private property without a warrant when certain exigent circumstances exist, including the need to '"render emergency assistance to an injured occupant or to protect an occupant from imminent injury."' Kentucky v. King, 563 U.S. 452, 460, 470 (2011); see also Brigham City v. Stuart, 547 U.S. 398, 403-

404 (2006) (listing other examples of exigent circumstances). And, of course, officers may generally take actions that '"any private citizen might do"' without fear of liability. E.g., [Florida v.] Jardines, 569 U.S. [1] at 8 [(2013)] (approaching a home and knocking on the front door).

"The First Circuit's 'community caretaking' rule ... goes beyond anything this Court has recognized. The decision below assumed that [the officers] lacked a warrant or consent, and it expressly disclaimed the possibility that they were reacting to a crime. The court also declined to consider whether any recognized exigent circumstances were present because [the officers] had forfeited the point. Nor did it find that [the officers'] actions were akin to what a private citizen might have had authority to do if [Caniglia's] wife had approached a neighbor for assistance instead of the police.

"Neither the holding nor logic of Cady [v. Dombrowski, 413 U.S. 433 (1973),] justified that approach. True, Cady also involved a warrantless search for a firearm. But the location of that search was an impounded vehicle -- not a home -- '"a constitutional difference"' that the opinion repeatedly stressed. 413 U.S. at 439; see also id., at 440-442. In fact, Cady expressly contrasted its treatment of a vehicle already under police control with a search of a car 'parked adjacent to the dwelling place of the owner.' Id., at 446-448 (citing Coolidge v. New Hampshire, 403 U.S. 443 (1971)).

"Cady's unmistakable distinction between vehicles and homes also places into proper context its reference to 'community caretaking.' This quote comes from a portion of the opinion explaining that the 'frequency with which ... vehicle[s] can become disabled or involved in ... accident[s] on public highways' often requires police to perform noncriminal 'community caretaking functions,' such as providing aid to motorists. 413 U.S. at 441. But, this recognition that police officers perform many civic tasks in modern society was just

> that -- a recognition that these tasks exist, and not an open-ended license to perform them anywhere."

953 U.S. at ___, 141 S.Ct. at 1599-1600. Caniglia was a unanimous decision, accompanied by concurring opinions authored by Chief Justice Roberts, Justice Alito, and Justice Kavanaugh discussing additional situations involving permissible warrantless entries and searches. In particular, Chief Justice Roberts opined: "A warrant to enter a home is not required, we explained, when there is a 'need to assist persons who are seriously injured or threatened with such injury.' … Nothing in today's opinion is to the contrary ...." Caniglia, 593 U.S. at ___, 141 S.Ct. at 1600 (Roberts, C.J., concurring)(quoting Brigham City, 547 U.S. at 403).

Shortly after releasing Caniglia, the United States Supreme Court ordered the United States Court of Appeals for the Eighth Circuit to reconsider its decision in United States v. Sanders, 956 F.3d 534 (8th Cir. 2020), in light of the holding in Caniglia that the community-caretaking exception to the warrant requirement does not extend to law-enforcement officers' entry into a home. See Sanders v. United States, 593 U.S. ___, 141 S.Ct. 1646 (2021). Sanders involved a 911 call reporting a domestic disturbance in a home and the discovery of a gun.

Although the Court of Criminal Appeals relied, in part, on caselaw discussing the community-caretaking exception to uphold the warrantless search in the present case, the holding in Caniglia did not abrogate long-standing precedents allowing the warrantless entry into and search of a home under certain circumstances. The Court of Criminal Appeals also cited State v. Clayton, 155 So. 3d 290 (Ala. 2014), which recognizes that the circumstances surrounding police involvement in rendering emergency assistance may support a warrantless entry into and search of a home. In Clayton, the police department received a call regarding the operation of a methamphetamine laboratory at a residence in an apartment complex. The police officers stated that, upon arrival, they were able to smell the odor that they knew from their training and experience was consistent with methamphetamine as they approached the apartment in question. In an effort to determine the origin of the odor, they knocked on the apartment door. When one of the defendants opened the door, the officers stated they were able to detect a stronger odor of methamphetamine from inside the apartment. The other defendant was present along with two small children. The officers informed the defendants that they had to enter and conduct a protective

sweep to clear the residence of all occupants so that fire-department personnel could enter and check the apartment for safety reasons. Those safety reasons included making sure that there were no chemicals present that could harm the apartment's residents or others by exploding or producing noxious fumes. The defendants and children were removed from the apartment, and the fire-department personnel searched the apartment.

The trial court in Clayton concluded that no exigent circumstances had existed to justify the entry into, or the search of, the apartment because, it determined, there had been no outward sign of danger. The Court of Criminal Appeals affirmed the trial court's order. On certiorari review, the State contended that the officers had had probable cause to search the apartment, and this Court agreed, holding that the officers had had probable cause to believe that the defendants were engaged in the illegal activity of manufacturing methamphetamine and that the existence of exigent circumstances -- e.g., the possible harm to the residents or others -- along with probable cause had justified the warrantless entry and search the apartment. Clayton, 155 So. 3d at 295-303.

Clayton involved an exigent circumstance, i.e., an alleged ongoing criminal act capable of producing harm, coupled with probable cause, thereby obviating the need for a warrant. In contrast, the exigent circumstance in this case involves the need to enter a residence to render aid to someone in distress. In Sutterfield v. City of Milwaukee, 751 F.3d 542 (7th Cir. 2014), the United States Court of Appeals for the Seventh Circuit considered the propriety of a forcible entry into a home by police, without a warrant, for an emergency purpose. In Sutterfield, the Seventh Circuit Court of Appeals addressed whether the forcible entry into Krysta Sutterfield's home by police, without a warrant, to "effectuate an emergency detention for purposes of a mental health evaluation" was lawful. 751 F.3d at 545. The court concluded that "the warrantless entry into Sutterfield's home was justified under the exigent circumstances exception to the Fourth Amendment's warrant requirement, as the officers had a reasonable basis to believe that Sutterfield posed an imminent danger of harm to herself." Id.

The Seventh Circuit Court of Appeals explained that, under the emergency-detention or emergency-aid doctrine, police officers may enter a home without a warrant for an urgent purpose other than to arrest a

suspect or to search for evidence of a crime, and that the test for determining the applicability of this exception is an objective one. The court stated that if the defining characteristic of emergency aid is urgency, then there is no logical need to consider whether there is probable cause or the need for a criminal warrant when the emergency-aid exception applies. "'Officers do not need probable cause if they face exigent circumstances in an emergency.'" 751 F.3d at 560 (quoting United States v. Gordon, 741 F.3d 64, 70 (10th Cir. 2014)).

The Court of Criminal Appeals found State v. Smith, 59 Kan. App. 2d 28, 476 P.3d 847 (2020), to be persuasive in upholding the warrantless search of Byrd's jacket. We agree. In Smith, police officers were dispatched to check on a woman who had apparently fallen asleep in her car, which was parked in someone else's driveway. One of the officers saw papers in the car with the name "Brittany Smith." The officer called dispatch and was informed that there were two Brittany Smiths in the system, with similar birth dates, heights, weights, and physical descriptions. Another officer told the others over the radio that he was familiar with a Brittany Smith who had a history of opioid use. After failing to rouse the woman, the officers removed her from the car, but she

remained unresponsive and appeared to be suffering from an overdose. When emergency personnel arrived at the scene, an officer searched the woman's purse, looking for her identification and any information about substances she may have ingested. When looking through Smith's purse, the officer found prescription and nonprescription medications, as well as a pipe covered with "'crystal-like residue and burnt residue.'" Smith, 59 Kan. App. 2d at 31, 476 P.3d at 850. Smith's identity was confirmed via the prescription medications, but the officer never found her driver's license. By the time the officer finished the search of the purse, Smith had been loaded in the ambulance.

After Smith headed to the hospital in the ambulance, the officer began searching Smith's car, looking "'[f]or identification and any substance, prescriptions, nonprescription that she might have ODd on.'" Smith, 59 Kan. App. 2d at 31, 476 P.3d at 850. The officer found a spoon with a cotton ball and residue on it under the car's radio. The State charged Smith with possession of methamphetamine and drug paraphernalia and driving under the influence. Smith moved to suppress the evidence found in her purse and in her car. The trial court suppressed the evidence found in Smith's car, determining that the

search of her car was not justified as part of the officers' efforts to provide her with emergency aid. But, the trial court denied Smith's motion with regard to the evidence found in her purse, stating:

> "'The officers had been given the information that Ms. Smith had arrived recently, so apparently had parked in a driveway and was definitely incapacitated and she was in an operable vehicle and that triggers the public safety exception, not only for herself, but the rest of the public.... I'm not questioning at the preliminary the officer testified she looked only for I.D. but today she testified that she was looking in the purse for prescriptions also, and it is reasonable to me in the course of a safety stop to find something that might help the hospital treat Ms. Smith, because she definitely needed treatment. And so assuming the officer was also looking for evidence of prescriptions, or whatever Ms. Smith had consumed, if she had, to me the purse search is valid.'"

Smith, 59 Kan. App. 2d at 32, 476 P.3d at 851. Smith appealed. The Kansas Court of Appeals stated:

> "Relevant here, Kansas courts have recognized a limited exception to the Fourth Amendment's prohibition of warrantless searches when a law enforcement officer is aiding a person who is 'seriously injured or imminently threatened with injury.' State v. Neighbors, 299 Kan. 234, 248, 328 P.3d 1081 (2014). In Neighbors, our Kansas Supreme Court analyzed the contours of this emergency-aid exception in the context of determining when officers could enter a person's residence without a warrant. Adopting the United States Supreme Court's rationale in Mincey v. Arizona, 437 U.S. 385, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (1978), Neighbors found that the emergency-aid exception applies when '(1) law enforcement officers enter the premises with an objectively reasonable basis to believe someone inside is seriously injured

or imminently threatened with serious injury; and (2) the manner and scope of any ensuing search once inside the premises is reasonable.' 299 Kan. at 249, 328 P.3d 1081.

"Neighbors explained that the emergency-aid exception to the warrant requirement 'gives an officer limited authority to "do no more than is reasonably necessary to ascertain whether someone is in need of assistance and to provide that assistance."' 299 Kan. at 251, 328 P.3d 1081 (quoting 3 LaFave, Search and Seizure § 6.6[a], p. 622 & n.65). Thus, when entering a residence, as the officers did in Neighbors, an officer is 'limited in the areas of the premises that can be searched' to places where the person needing assistance may be found. 299 Kan. at 251-52, 328 P.3d 1081. And 'the right of entry dissipates once an officer confirms no one needs assistance or the assistance has been provided.' 299 Kan. at 252, 328 P.3d 1081. As these considerations indicate, the primary test in determining whether the emergency-aid exception applies is whether the officers reasonably believe that a person in the searched area needs emergency assistance. See Mincey, 437 U.S. at 392, 98 S.Ct. 2408.

"Typically, courts discuss the emergency-aid exception in cases that involve a 'trespass investigation' -- police entering a person's home in response to an emergency inside. See, e.g., Neighbors, 299 Kan. at 250-53, 328 P.3d 1081. This case does not involve such facts. But the district court found that the reasoning behind that exception was equally applicable to Officer Brown's search of Smith's purse due to her medical emergency. Other jurisdictions, citing Mincey, have recognized a medical-emergency exception justifying a warrantless search of a person's purse or wallet when that person is found in an unconscious or semi-conscious condition. See, e.g., People v. Wright, 804 P.2d 866, 870 (Colo. 1991) (finding the exception applied when there is 'a real and immediate danger to the life or safety of another' and 'the officer's purpose in conducting the search [is] to render aid or assistance to the endangered person').

"Although Kansas courts have not previously applied the emergency-aid exception in this context, the Kansas Supreme Court peripherally discussed the matter in State v. Evans, 308 Kan. 1422, 430 P.3d 1 (2018). In Evans, the State argued that law enforcement officers were justified in searching a wallet to look for a person's driver's license because they had a statutory duty to complete an accident report -- that is, the officer's search of a wallet was necessary to verify the driver's identity. Our Kansas Supreme Court disagreed, finding that

> "'the circumstances did not present an exigency or an emergency that required an immediate verification of Evans' identity or give rise to the emergency doctrine exception to the warrant requirement. Compare United States v. Dunavan, 485 F.2d 201 (6th Cir. 1973) (upholding search when driver was foaming at the mouth and unable to talk and officer was seeking information explaining nature of the defendant's condition and the best means of treating it), and Evans v. State, 364 So. 2d 93 (Fla. Dist. Ct. App. 1978) (holding officer lawfully searched purse for medical information that would account for driver's condition of being unable to communicate in any way), with Morris v. State, 908 P.2d 931 (Wyo. 1995) (holding search of effects not permissible when individual was conscious and able to ask and answer questions).' Evans, 308 Kan. at 1436, 430 P.3d 1.

"The court's discussion in Evans focused on the plain-view doctrine. But it also noted there was no exigent need for the officers to verify Evans' identity and -- unlike a situation where a person is found unconscious or is unable to communicate with officers -- no medical emergency necessitated the search. 308 Kan. at 1436-37, 430 P.3d 1; see

also 308 Kan. at 1437, 430 P.3d 1 (citing Wright, 804 P.2d at 871) (observing that 'the Legislature did not impose a duty on officers that would justify invading the privacy guaranteed by the Fourth Amendment when ... the driver is conscious and able to answer the officer's questions about her identity'). (Emphasis added.)

"Thus, although the emergency-aid exception did not apply in Evans, the court recognized that there may be exigent circumstances where an officer may be justified in searching a purse or other personal effect to address an emergency. And Kansas law enforcement officers may search a person's purse or wallet to seek information if that person is unconscious or uncommunicative and there are exigent circumstances, such as a medical emergency, necessitating the search. That is, the emergency-aid exception to the warrant requirement may permit not only a search of a residence but also a search of personal belongings. In such circumstances, the emergency-aid exception applies when (1) law enforcement officers have an objectively reasonable basis to believe someone is seriously injured or imminently threatened with serious injury and (2) the manner and scope of any ensuing search is reasonable. See Neighbors, 299 Kan. at 249, 328 P.3d 1081.

"With this background, we must analyze the district court's conclusion that Officer Brown's search of Smith's purse fell within the emergency-aid exception to the warrant requirement. In other words, we must determine whether Officer Brown had an objectively reasonable basis to believe Smith's life or safety was in real and immediate danger and, if so, whether the manner and scope of the search of Smith's purse was reasonable. Neighbors, 299 Kan. at 249, 328 P.3d 1081; Wright, 804 P.2d at 870.

"When Officer Brown arrived at the scene, Smith was unconscious in her vehicle. Smith could have been sleeping, but she did not respond to the officers' repeated pounding on

the window, shouting, or even their poking of her head with the lockout tool. The officers were also informed that a woman named 'Brittany Smith' had a history of opioid abuse, which -- along with her unresponsiveness -- led the officers to believe that she had potentially overdosed and was in need of immediate medical assistance. Even after the officers opened the door to the car and were able to rouse Smith, she remained incoherent and was unable to hold up her head; she struggled to respond to basic questions. While Smith was somewhat conscious, her condition not only made the officers' and paramedics' communication with her difficult but further suggested her need for immediate medical attention. Under these circumstances, we conclude Officer Brown's belief that Smith's life or safety was in immediate danger due to a potential overdose was objectively reasonable. Accord State v. McKenna, 57 Kan. App. 2d 731, 737-40, 459 P.3d 1274, rev. denied 312 Kan. ___ (August 31, 2020) (discussing similar steps in the context of a public-safety stop and concluding the officer's actions were reasonable).

"Smith does not dispute that Officer Brown had an objectively reasonable basis to believe that she was suffering a medical emergency and was in need of urgent care. She also 'does not take issue with Brown's initial retrieval of the purse.' Instead, she argues that this emergent need dissipated when emergency medical personnel arrived at the scene and began administering care. In other words, Smith contends that Officer Brown's continued search of her purse exceeded the scope of the exigency after paramedics and firefighters arrived at the scene.

"It is true, as our Kansas Supreme Court noted in Neighbors, that the emergency-aid exception is limited in time and scope. Under this limited authority, an officer may take reasonable steps to determine whether someone needs assistance and to provide that assistance. 299 Kan. at 251, 328 P.3d 1081; see also Mincey, 437 U.S. at 393, 98 S.Ct. 2408 (cautioning that a warrantless search 'must be "strictly

> circumscribed by the exigencies which justify its initiation"'). This authority ends when the emergent need dissipates -- when it is no longer reasonable to believe that a person needs emergency assistance. See Neighbors, 299 Kan. at 254, 328 P.3d 1081.
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> "At the same time, Smith provides no legal authority to support her contention that the exigency justifying a warrantless search dissipates as soon as other medical personnel are present. Such a rule would undermine the purpose of the emergency-aid doctrine -- a recognition that the need to protect or preserve life or avoid serious injury, in certain circumstances, supersedes a person's right of privacy -- and would counteract the case-by-case analysis Kansas courts employ when determining whether the exception applies. We conclude there is no bright-line demarcation that defines when officers' limited authority to conduct a warrantless search under the emergency-aid exception ends. Instead, the touchstone of a court's analysis is reasonableness: whether the officers reasonably believe the search is necessary to provide emergency assistance and whether the search itself is reasonable in manner and scope.
>
> "Officer Brown searched Smith's purse seeking Smith's identity and any information that would explain the nature of Smith's condition and the best means of treating it. When the officer made this decision, the paramedics were beginning to treat Smith. But Smith's medical emergency and the need to provide her assistance did not abruptly end once the ambulance was on the scene."

Smith, 59 Kan. App. 2d at 33-37, 476 P.3d at 851-54 (some emphasis added).

Like the present case, Smith involved a search during a medical emergency, but the present case has the added distinction of involving a

safety alert. Based on that distinction, Byrd asserts that Ex parte Warren, 783 So. 2d 86 (Ala. 2000), which involved a patdown search for weapons, is analogous. In Warren, this Court held that evidence found in a small plastic box a police detective had found during a protective patdown search for weapons -- conducted because the detective testified it was common for there to be weapons in the near vicinity of narcotics transactions -- should have been excluded. After removing the plastic box from the defendant's pocket, the detective identified it as a Tic Tac brand breath-mint container. The detective then opened the box and discovered small rocks of crack cocaine. This Court applied the plain-feel doctrine established in Minnesota v. Dickerson, 508 U.S. 366, 375-76 (1993), which held:

> "If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain view context."

In addressing whether the cocaine should have been suppressed, this Court asked: "Can an officer's tactile perception of an object such as a Tic Tac box, a matchbox, a pill bottle, or a film canister give the police

officer probable cause to believe, before seizing it, that the object is contraband?" Warren, 783 So. 2d at 91. The plain-feel doctrine "addresses the ability of the police to seize non-threatening contraband detected during the course of a Terry [v. Ohio, 392 U.S. 1 (1968),] search." Steadman v. State, 997 So. 2d 1258, 1259 (Fla. Dist. Ct. App. 2009). The testimony in Warren indicated that, while conducting an authorized patdown search of the defendant, a police detective encountered an object in the defendant's pants pocket that he immediately recognized as a plastic container; that the detective was aware, based on his experience as a narcotics investigator, that illegal narcotics are often carried in the type of container in the defendant's pocket; and that the detective then reached into the defendant's pocket to retrieve the Tic Tac box, not because he thought it was a weapon but because he thought it contained drugs. In the present case, Officer Gray searched Byrd's jacket for weapons and discovered the pill bottle, but Officer Gray retrieved the pill bottle in order to tell the medics about medication Byrd may have been taking. Ex parte Warren is inapposite.

Here, Byrd placed a 911 call seeking emergency services. "'911 calls are the predominant means of communicating emergency

situations.'" United States v. Martinez, 643 F.3d 1292, 1297 (10th Cir. 2011) (quoting United States v. Najar, 451 F.3d 710, 719 (10th Cir. 2006)).

> "[A 911 call] fits neatly with a central purpose of the exigent circumstances (or emergency) exception to the warrant requirement, namely, to ensure that the police or other government agents are able to assist persons in danger or otherwise in need of assistance. ... The efficient and effective use of the emergency response networks requires that the police (and other rescue agents) be able to respond to such calls quickly and without unnecessary second-guessing. As then-Circuit Judge Burger stated in Wayne [v. United States, 318 F.2d 205 (D.C. Cir. 1963)], '[T]he business of policemen and firemen is to act, not to speculate or meditate on whether the report is correct. People could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process.' 318 F.2d at 212."

United States v. Richardson, 208 F.3d 626, 630 (7th Cir. 2000). Although not all 911 calls would support a finding of exigent circumstances,[1] reporting an emergency can be enough to support a warrantless search, particularly when the caller identifies himself. Richardson, 208 F.3d at 630. Here, Byrd identified himself when he called 911 for help.

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[1]See, e.g., United States v. Martinez, 643 F.3d 1292, 1296 (10th Cir. 2010)(holding that receipt of a 911 call that had only static on the line was insufficient to create an objectively reasonable belief that someone inside the home where the call originated was in need of aid).

Byrd's address had been flagged with a safety alert, requiring the police to be dispatched to ensure that the area was safe for medical personnel to enter. It is unclear from the record who placed the safety alert on Byrd's address and why they did so. The police officers arrived at Byrd's house and determined that it was safe for the medics to enter Byrd's house and treat him. At first, Byrd wanted to go to the hospital, so an ambulance was called. While Byrd, the police officers, and the medics were waiting for the ambulance, "someone said something" about grabbing Byrd's jacket. Officer Gray searched Byrd's jacket for weapons and found none. The pat down of the jacket was reasonable.

During the pat down of the jacket, Officer Gray found the pill bottle and removed it. While the defendant in Smith, supra, was somewhat conscious, her condition not only made the officers' and paramedics' communication with her difficult but further suggested her need for immediate medical attention. In the present case, Byrd himself communicated that he needed emergency aid by calling 911. The search of Smith's purse was determined to be reasonable because it was done to identify Smith and to see if she had overdosed on drugs. Here, Byrd, who was communicative, requested additional treatment at a hospital. The

retrieval of the pill bottle from Byrd's jacket did not exceed the scope of the exigency because Byrd was requesting further medical treatment. Officer Gray testified that he removed the pill bottle to give it to the medics so that they would know what medications Byrd was taking. Subsequently, after Officer Gray found the pill bottle in his jacket, Byrd refused further medical assistance. Although Byrd changed his mind and refused to go to the hospital, the emergency did not simply end because Byrd refused further treatment.

The record before us shows that the emergency justified Officer Gray's retrieval of the pill bottle during the warrantless search of Byrd's house and jacket. The facts in this case objectively establish that, at the time of the search, there was an ongoing emergency requiring the police officers to act to render aid to Byrd. Accordingly, the judgment of the Court of Criminal Appeals is affirmed.

AFFIRMED.

Shaw, Wise, Bryan, Sellers, Mendheim, and Stewart, JJ., concur.

Parker, C.J., concurs specially, with opinion, which Mitchell, J., joins.

Mitchell, J., concurs specially, with opinion.

PARKER, Chief Justice (concurring specially).

I concur fully in the main opinion but write to emphasize our independent Alabama constitutional protection against unreasonable searches and seizures. In this case, the parties focus solely on cases interpreting the federal Fourth Amendment, so the main opinion properly does the same. But the Alabama Constitution also protects against "unreasonable seizure or searches." Art. I, § 5, Ala. Const. 1901 (Off. Recomp.). Although the language of § 5 parallels that of the Fourth Amendment, that does not necessarily mean that § 5 must be interpreted in exactly the same way. See Jeffrey S. Sutton, 51 Imperfect Solutions: States and the Making of American Constitutional Law 174-78 (2018).

Alabama judges and lawyers are sworn to support both the United States Constitution and the Alabama Constitution. Art. XVI, § 279. Accordingly, I urge parties in future cases not to treat § 5 as only a footnote to the Fourth Amendment. Rather, when appropriate, parties should discuss whether our State constitutional protection against unreasonable searches and seizures may function differently.

Mitchell, J., concurs.

MITCHELL, Justice (concurring specially).

I concur in the main opinion, which correctly concludes that no binding precedent requires application of the exclusionary rule to the evidence at issue in this case. I write separately to emphasize that the exclusionary rule is an atextual and ahistorical judicial innovation that, in my view, should not be extended any further than necessary to comply with United States Supreme Court precedent. In an appropriate future case, this Court should say so explicitly.

I.

The exclusionary rule requires courts to exclude (or "suppress") any evidence obtained by an unreasonable search or seizure, even if it is probative and admissible under the relevant jurisdiction's rules of evidence. The exclusionary rule was announced by the United States Supreme Court in Weeks v. United States, 232 U.S. 383, 386 (1914), and incorporated against the States in Mapp v. Ohio, 367 U.S. 643, 657 (1961).

Although Weeks and Mapp were premised on the notion that "the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments" to the United States Constitution, Mapp, 367 U.S. at 657,

the United States Supreme Court now acknowledges that the rule is a 20th-century invention unsupported by the Constitution's text or history. See, e.g., Hemphill v. New York, 595 U.S. ___, ___, 142 S. Ct. 681, 692 (2022) (Sotomayor, J., writing for an eight-justice majority[2]) (describing the exclusionary rule as a "prophylactic rule" created by judges, "rather than a 'substantive guarantee'" created by the Constitution); Davis v. United States, 564 U.S. 229, 236 (2011) ("The [Fourth] Amendment says nothing about suppressing evidence obtained in violation of [its] command. … [T]he exclusionary rule … is a 'prudential' doctrine created by this Court …." (citation omitted)); Collins v. Virginia, 584 U.S. ___, ___, 138 S. Ct. 1663, 1676 (2018) (Thomas, J., concurring) (explaining that the exclusionary rule was unknown to the Founders, has no precedent "'in Roman Law, Napoleonic Law or even the Common Law of England,'" and was not applied by the United States Supreme Court "until the 20th century" (citation omitted)). The United States Supreme Court has nonetheless continued to describe the exclusionary rule as a

[2]Justice Thomas alone dissented (on jurisdictional grounds), but as his special writing in Collins v. Virginia makes clear, he also acknowledges that the exclusionary rule is inconsistent with the Fourth Amendment's text and history. See, 584 U.S. ___, ___-___, 138 S. Ct. 1663, 1675-80 (2018) (Thomas, J., concurring).

component of "federal law" that binds the States. See Arizona v. Evans, 514 U.S. 1, 10 (1995); Massachusetts v. Sheppard, 468 U.S. 981, 991 (1984).

While Alabama courts initially recognized the rule for what it was -- a misbegotten judicial innovation -- we eventually acquiesced to federal imposition of that rule. We even began asserting, without much apparent thought or explanation, that since the United States Supreme Court has invoked the rule in its application of the federal Constitution, Alabama courts should also invoke the rule in our application of this State's Constitution. Compare, e.g., Taylor v. State, 399 So. 2d 881, 885, 893 (Ala. 1981) (emphasizing that the exclusionary rule is not "constitutionally required" and reasoning that Alabama courts should not "extend the rule any further than is necessary to comply with decisions of the United States Supreme Court"), rev'd, 457 U.S. 687 (1982), with Ex parte Turner, 792 So. 2d 1141, 1150 (Ala. 2000) (asserting that "application of the exclusionary rule is necessary to preserve the citizens' remaining protections under the Fourth Amendment to the United States Constitution and Article I, § 5 of the Alabama Constitution of 1901"); see also State v. Walker, 267 P.3d 210, 220-24 (Utah 2011) (Lee,

J., concurring) (criticizing other state-court decisions for reflexively "jumping on … the state exclusionary rule bandwagon" in the wake of Mapp).

The United States Supreme Court erred by inventing the exclusionary rule and imposing that rule on the States. And this Court, for its part, committed a similarly serious error when we embraced that rule in our own State-law jurisprudence many decades later.

As Justice Thomas has explained, the exclusionary rule is unmoored from the practice of the Founding generation, which understood that the proper remedy for an unlawful seizure is a civil one, not the exclusion of resulting evidence from subsequent criminal trials. Collins, 584 U.S. at ___, 138 S. Ct. at 1676-77 (Thomas, J., concurring). "The Founders would not have understood the logic" of a rule holding that "'[t]he criminal … [must] go free because the constable has blundered.'" 584 U.S. at ___, 138 S. Ct. at 1676 (quoting People v. Defore, 242 N.Y. 13, 21, 150 N.E. 585, 587 (1926) (Cardozo, J.)). Indeed, every noteworthy authority from the beginning of Anglo-American history up until the ratification of the Fourteenth Amendment held that "if evidence was relevant and reliable, its admissibility did not 'depend upon the

lawfulness or unlawfulness of the mode[] by which it [was] obtained.'" 584 U.S. at ___, 138 S. Ct. at 1676-77 (citation omitted) (collecting cases and other authorities); Akhil Reed Amar, Fourth Amendment First Principles, 107 Harv. L. Rev. 757, 786 (1994) ("Supporters of the exclusionary rule cannot point to a single major statement from the Founding -- or even the antebellum or Reconstruction eras -- supporting Fourth Amendment exclusion of evidence in a criminal trial.").

The exclusionary rule is equally divorced from the understanding of the People of this State at the time they ratified the Alabama Constitution of 1901. During the period leading up to ratification, there was simply "no principle or theory[] upon which the State" could be "deprived of the right to employ the evidence of a criminal offense," even if that evidence was obtained "without legal justification." Shields v. State, 104 Ala. 35, 38, 16 So. 85, 87 (1894); see also Wolf v. Colorado, 338 U.S. 25, 33 (1949) (Appendix, Table A) (listing Alabama as one of the many "states which opposed the Weeks doctrine before the Weeks case had been decided"). The generation that framed this State's Constitution thus shared the understanding of our nation's Founding Fathers: "[T]he exclusion of the evidence criminating the defendant[] is not within the

scope of the remedy, or the measure of redress," for an unreasonable search or seizure. Shields, 104 Ala. at 39, 16 So. at 87.

The exclusionary rule, in short, has no basis in the United States Constitution, the Alabama Constitution, or the common law. It is sheer judicial fiat.

II.

The exclusionary rule is not only a fiction; it's a pernicious one. "Exclusion exacts a heavy toll on both the judicial system and society at large. … It almost always requires courts to ignore reliable, trustworthy evidence bearing on guilt or innocence." Davis v. United States, 564 U.S. 229, 237 (2011). The People of this State have a sovereign right to see their duly enacted criminal laws enforced. The exclusionary rule denies them that right at great cost: all manner of criminals can be "set … loose in the community without punishment" if evidence of their guilt is thrown out under this dreamt-up doctrine. Davis, 564 U.S. at 237; see also Taylor, 399 So. 2d at 888 (criticizing the rule by echoing Wigmore's observation that "'the two effects of the exclusionary rule are to produce a troublesome grist for the courts and to return rascals to the practice of

their nefarious trades'" (quoting 8 J. Wigmore, Evidence in Trials at Common Law (rev. by J. McNaughton) § 2184a at 52 (1961)).

This Court once attempted to justify the exclusionary rule by asserting that "a motion to suppress is the only effective way to invoke the supervision of the trial courts and the appellate courts" over unreasonable searches and seizures. Turner, 792 So. 2d at 1150. That assertion -- which was unsupported by any citation or explanation -- is false, as the United States Supreme Court itself has acknowledged. See Hudson v. Michigan, 547 U.S. 586, 597-99 (2006) (observing that 42 U.S.C. § 1983 and various state laws provide a remedy to individuals injured by official misconduct and emphasizing that internal police disciplinary proceedings also deter misconduct). So far as I can tell, there is no evidence that the exclusionary rule is effective at deterring police misconduct at all,[3] let alone that the rule is the only effective way to achieve deterrence.

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[3]See United States v. Janis, 428 U.S. 433, 453 (1976) (observing that "'[e]mpirical statistics are not available to show that the inhabitants of states which follow the exclusionary rule suffer less from lawless searches and seizures than do those of states which admit evidence unlawfully obtained,'" and explaining that Mapp itself had the obvious effect of eliminating any "possibility of a broad-scale controlled or even semi-controlled comparison" (citation omitted)).

This Court has alternatively hinted that the exclusionary rule might be justified by the principle that the government should not be allowed to benefit from its own wrongdoing, see Turner, 792 So. 2d at 1150 ("'The tendency of those who execute the criminal laws … to obtain conviction by means of unlawful seizures ... should find no sanction in the judgments of the courts ….'" (quoting Weeks, 232 U.S. at 392)), but that rationalization also falls flat. It is primarily the People of this State -- not the offending officer or the "government" as a distinct entity -- who benefit when a criminal is brought to justice. See Amar, Fourth Amendment First Principles, 107 Harv. L. Rev. at 793 ("When the murderer's bloody knife is introduced, it is not only the government that profits; the people also profit when those who truly do commit crimes … are duly convicted on the basis of reliable evidence."). By the same token, when reliable proof of guilt is thrown out because of a police officer's mistake or malfeasance, it is the People who suffer. [4]

[4]The overwhelming majority of criminals released from prison go on to commit new crimes within their communities. See Leonardo Antenangeli, Ph.D., and Matthew R. Durose, U.S. Dep't of Justice, Bureau of Justice Statistics, Special Report: Recidivism of Prisoners Released in 24 States in 2008: A 10-Year Follow-Up Period (Sept. 2021), currently available at: https://bjs.ojp.gov/BJS_PUB/rpr24s0810yfup0818/Web%20content/508%

III.

The exclusionary rule's unfortunate history and consequences are something that Alabama courts may consider in deciding whether to extend the exclusionary rule to new circumstances. See Taylor, 399 So. 2d at 893. Since the exclusionary rule has no support in constitutional text or history and has had "grave adverse consequence[s]" for the administration of justice, Hudson, 547 U.S. at 595, I believe it is never appropriate for courts to "extend the rule any further than is necessary to comply with [binding precedential] decisions," Taylor, 399 So. 2d at 893.[5] Alabama courts may be required to follow even demonstrably

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20compliant%20PDFs (finding that two-thirds of prisoners are rearrested within 3 years after their release and that 82% are rearrested within 10 years). I doubt that recidivism is less common among criminals who escape justice (including because proof of their guilt was suppressed by application of the exclusionary rule) than it is among criminals who were duly convicted and punished. And, of course, recidivism statistics capture only those crimes that result in a successful arrest or conviction -- many, if not most, crimes go unreported or unsolved, so the actual recidivism figures are almost certainly higher.

[5]I recognize that the approach taken by the majority in Taylor resulted in a 5-4 reversal by the United States Supreme Court on the underlying Fourth Amendment question, see 457 U.S. 687 (1982), but I don't view that reversal as a blemish. Our Court in Taylor understood that it is better to be reversed for correctly applying the law (within the bounds allowed by then-existing precedent) than to be affirmed for straying beyond it.

erroneous United States Supreme Court precedent, but we are not required to expand that precedent beyond what the Court itself has done.

IV.

In an appropriate future case, I believe this Court should reconsider our recent embrace of the exclusionary rule with respect to § 5 of the Alabama Constitution of 1901. I also echo Justice Thomas's call for the United States Supreme Court to reconsider its decision in Mapp v. Ohio, which incorporated the exclusionary rule against the States. That decision is untethered from constitutional text and history, and it has imposed great costs on this State and its People.