STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant, v ERIC CONRAD HILL, Defendant-Appellee.	FOR PUBLICATION February 5, 2013 9:05 a.m. No. 301564 Oakland Circuit Court LC No. 2010-009256-AR

Before: MURPHY, C.J., and MARKEY and WHITBECK, JJ.

MURPHY, C.J.

Defendant was charged with the manufacture of marijuana, MCL 333.7401(2)(d)(*iii*), after police discovered marijuana plants under a grow light in a bedroom closet in defendant's home. The police entered defendant's house, absent a warrant, on the basis of a discussion with one of defendant's neighbors who was worried about his well-being, along with other circumstantial evidence that suggested defendant was in need of assistance. The district court granted defendant's motion to suppress the evidence, and it dismissed the charge, finding that the warrantless search of defendant's home was unconstitutional and that the community caretaker exception to the warrant requirement was not implicated under the facts presented. The circuit court affirmed the district court's ruling on the prosecutor's appeal. This Court denied the prosecutor's application for leave to appeal, but our Supreme Court, in lieu of granting leave, remanded the case to this Court "for consideration as on leave granted." *People v Hill*, 491 Mich 870; 809 NW2d 563 (2012). We hold that the warrantless entry into defendant's home by police did not violate the protections against unreasonable searches and seizures set forth in article 1, § 11, of the Michigan Constitution and the Fourth Amendment of the United States Constitution, where, given all of the surrounding circumstances, the community caretaking exception to the warrant requirement was implicated. Moreover, even were we to assume that a constitutional violation occurred, this is not a case in which the exclusionary rule should apply, as there is no evidence of police misconduct. Accordingly, we reverse and remand for reinstatement of the marijuana manufacturing charge.

We review for clear error findings of fact made by a trial court at a hearing on a motion to suppress evidence predicated on allegations that the police violated a defendant's constitutional rights. *People v Slaughter*, 489 Mich 302, 310; 803 NW2d 171 (2011). However, matters regarding the application of facts to constitutional principles, such as the right to be free from unreasonable searches and seizures, are reviewed de novo. *Id.*

Entry into a person's home by the police absent a warrant may be constitutionally valid under certain limited circumstances. *Id.* at 311. Although many warrantless searches are properly deemed unconstitutional pursuant to the warrant requirement, the United States Supreme Court has articulated several exceptions wherein a warrantless search is reasonable and thus constitutional, including a search by police conducted as part of their community caretaking function. *Id.* at 311-312.[1] For the community caretaking exception to be applicable, the actions by the police must be totally unrelated to the duties of the police to investigate crimes. *Id.* at 314, quoting *People v Davis*, 442 Mich 1, 22; 497 NW2d 910 (1993). Rendering aid to persons in distress is a community caretaking function. *Id.* at 23 ("entries made to render aid to a person in a private dwelling [are] part of the community caretaking function").

The 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. *Slaughter*, 489 Mich at 315 n 28. 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. *Id.* "Proof of someone's needing assistance need not be 'ironclad,' only 'reasonable.'" *Id.* The *Slaughter* Court further observed:

> [C]ourts must consider the reasons that officers are undertaking their community caretaking functions, as well as the level of intrusion the police make while performing these functions, when determining whether a particular intrusion to perform a community caretaking function is reasonable. For instance, a police inventory of a car is much less intrusive than a police entry into a dwelling. This is because the privacy of the home stands at the very core of the Fourth Amendment and because in no setting is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home. Thus, the threshold of reasonableness is at its apex when police enter a dwelling pursuant to their community caretaking functions. [*Id.* at 316 (citations, quotations, ellipses, and alterations omitted).]

Here, police officer Mike Emmi testified that he and another officer went to defendant's home shortly after midnight on March 8, 2010, as part of a "welfare check" after defendant's neighbor called police with concerns about defendant's well-being. According to Emmi, when the officers arrived, the neighbor approached them and indicated that, in the last few days to a week, she had not seen or heard from defendant and that, for the same time period, defendant's vehicle had not moved from his property, even though defendant would typically come and go in the vehicle on a regular basis. The neighbor also informed the officers that defendant usually worked in his house during the night, which she could generally hear, but she had not heard him working for several nights. The neighbor mentioned that the interior lights in defendant's house had been on for awhile and that defendant's cats had been looking out of the home's windows. The neighbor, who was worried about defendant, explained to Emmi that all of these

[1] The Michigan Constitution is generally construed to provide the same protection as the Fourth Amendment. *Slaughter*, 489 Mich at 311.

circumstances were unusual. Officer Emmi noticed that an interior house light was turned on, that there were six to eight pieces of mail in the mailbox, which were a few days old at most, that a phonebook was sitting on the front porch, and that defendant's car, which was cold and covered with some leaves, was sitting in the driveway. Emmi testified that he and the other officer knocked on defendant's door several times, but there was no answer. The officers also contacted dispatch and asked the dispatcher to make a phone call to defendant's home.

Emmi indicated that the officers proceeded to knock on back windows and yell out, asking if anyone was present, but there was no response. Emmi testified that he could hear "a humming noise" through one of the windows that sounded "like a humidifier or a heater." The officers were able to slide open an unlocked window and, according to Emmi, they "yelled inside several times in an attempt to locate anybody, but still did not receive an answer." Emmi indicated that most of the drapes were drawn and that he could not, for the most part, see inside the home by looking in through the windows. Emmi stated that a decision was made to enter the house and search for defendant for purposes of a welfare check. The officers then contacted dispatch again and informed the dispatcher that they were going to enter the house to do a welfare check. The officers entered the house and eventually they opened a bedroom closet and found the marijuana plants. Emmi testified that the closet was "tall enough for a person." The officers discovered that the source of the humming noise was a heater near the marijuana plants; there is no indication or suggestion in the record that the officers entered the house because they suspected that the humming noise was coming from a heater typically used in marijuana growing operations. Emmi testified that defendant had a prior conviction, but Emmi was not yet aware of the conviction when entering the house. Emmi claimed that he did not enter the home to investigate criminal activity. According to Emmi, there were no visible signs of a home invasion, no unusual odors emanating from the home, no signs of violence, and no sounds of someone in distress.[2]

[2] We respectfully disagree with the dissent's interpretation of some of the testimony given by Emmi. The dissent states that the neighbor "admittedly had little to no interaction with defendant, who lived several houses away." *Post* at 1. Emmi testified that it was his belief that the neighbor lived "next door one house west or two houses west" of defendant's residence, not "several" houses away. Emmi further testified that the neighbor knew defendant on "a first name basis" and that she knew him "as a friend as a neighbor." Emmi's testimony in general revealed that the neighbor was quite familiar with defendant's comings and goings, including the fact that he worked inside his house at night. There was no testimony indicating that the neighbor admitted to having little or no interaction with defendant. The dissent maintains that the neighbor was "of unknown credibility," *id.*, but while Emmi did not describe the nature of the contacts, he did testify that he "had a few contacts" with the neighbor in the past, and given Emmi's reliance on her concerns, it is reasonable to infer that the past contacts did not involve incredulous claims. The dissent also contends that Emmi entered defendant's home solely for the purpose of seeing "if . . . someone were inside." *Id.* Emmi, however, testified multiple times that the purpose of entry was to do a welfare check. Finally, the dissent complains that Emmi failed to speak with other neighbors living next to or across the street from defendant. However, when asked about whether he contacted these other neighbors, Emmi testified that "there was no

On application of the legal principles cited above and enunciated in *Slaughter*, we conclude that the community caretaker exception to the warrant requirement was implicated upon consideration of all of the surrounding circumstances taken in unison. The lower courts mistakenly relied on a lack of direct evidence definitively showing that defendant was present and in actual need of aid or assistance. Although there were no signs of forced entry or sounds of someone in distress, the circumstances were such that an officer could reasonably conclude that defendant may be in need of aid or assistance. The neighbor informed the officers that defendant would leave his house and return on a normal basis using his vehicle to travel, and defendant's car, covered with some leaves, had been sitting in the driveway unused for several days and was parked there when the police arrived. This would reasonably suggest that defendant was in his house when police came upon the scene, which conclusion finds additional support in the evidence showing that it was after midnight and the lights were on in defendant's house, which was common at night according to the neighbor because of defendant's proclivity to work in his house at night. Keeping in mind the indicators suggesting that defendant was present in the house, extensive efforts by the police to obtain a response from anyone inside the home failed, including knocking on the door and yelling through a window, and the neighbor had not heard any work activity that night by defendant, which was uncommon. Given the reasonable conclusion that defendant may be in the home under the circumstances (lights on and car parked outside), and considering the lack of response to the police officers' aggressive efforts to communicate, it would be reasonable to conclude that defendant was not only present but in need of attention, aid, or some kind of assistance. This becomes even more apparent when one considers the presence of the phonebook on the porch and the few days of mail that had accumulated in the mailbox. Moreover, the neighbor informed the officers that she was worried about defendant and that the situation at defendant's home was unusual. When all of the pieces of information are considered together and not individually, the sum of their parts equates to specific and articulable facts that would lead an officer to reasonably conclude that defendant was in need of aid. And the steps taken by the responding officers, who were motivated by the perceived need to render assistance, were no more than reasonably necessary to determine whether defendant was truly in need of aid. 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.

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 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.[3]

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one there" as to the houses on the east and west sides and that neighbors from across the street approached him but only after the entry.

[3] The dissent takes us to task for not citing an appellate case that has virtually identical circumstances and in which the community caretaking exception was applied. However, as noted by our Supreme Court in *Slaughter*, 489 Mich at 319, community caretaking functions are varied and are undertaken for different reasons; therefore, "reviewing courts must tailor their

This leads us to a separate discussion relative to application of the exclusionary rule. We find that, assuming a constitutional violation by the officers based on a lack of criteria sufficient to justify invocation of the community caretaker exception, there is no need to invoke the exclusionary rule, where the good-faith exception to the rule has gradually been extended by the courts to situations outside its traditional or historical contexts, and where the police officers here were acting in good faith.

In *Davis v United States*, __ US __; 131 S Ct 2419, 2426-2429; 180 L Ed 2d 285 (2011), the United States Supreme Court discussed the Fourth Amendment, the exclusionary rule, the good-faith exception to the rule, and the evolution of the good-faith exception to the exclusionary rule:

> The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Amendment says nothing about suppressing evidence obtained in violation of this command. That rule—the exclusionary rule—is a "prudential" doctrine, created by this Court to "compel respect for the constitutional guaranty." Exclusion is "not a personal constitutional right," nor is it designed to "redress the injury" occasioned by an unconstitutional search. The rule's sole purpose, we have repeatedly held, is to deter future Fourth Amendment violations. Our cases have thus limited the rule's operation to situations in which this purpose is "thought most efficaciously served." Where suppression fails to yield "appreciable deterrence," exclusion is "clearly . . . unwarranted."
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> Real deterrent value is a "necessary condition for exclusion," but it is not "a sufficient" one. The analysis must also account for the "substantial social costs" generated by the rule. 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. And its bottom-line effect, in many cases, is to suppress the truth and set the criminal loose in the community without punishment. Our cases hold that society must swallow this bitter pill when necessary, but only as a "last resort." For exclusion to be appropriate, the deterrence benefits of suppression must outweigh its heavy costs.

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analysis to the specifics of a particular intrusion before determining whether it is reasonable." Given the nature of these types of cases, it is highly unlikely that another appellate opinion has addressed nearly identical facts, such that a sound comparison could be made. Rather, we have proceeded as directed by *Slaughter* and tailored our analysis to the specific and unique facts regarding the particular entry at issue, resulting in our conclusion that the warrantless entry was reasonable. We agree with the general sentiments expressed in the lead opinion in *People v Ray*, 21 Cal 4th 464, 472; 88 Cal Rptr 2d 1; 981 P2d 928 (1999), that, in connection with the community caretaking exception, "[l]ocal police 'should and do regularly respond to requests of friends and relatives and others for assistance when people are concerned about the health, safety or welfare of their friends, loved ones and others.'" (Citation omitted.)

Admittedly, there was a time when our exclusionary-rule cases were not nearly so discriminating in their approach to the doctrine. "Expansive dicta" in several decisions, suggested that the rule was a self-executing mandate implicit in the Fourth Amendment itself. As late as . . . 1971 . . ., the Court "treated identification of a Fourth Amendment violation as synonymous with application of the exclusionary rule." In time, however, we came to acknowledge the exclusionary rule for what it undoubtedly is—a "judicially created remedy" of this Court's own making. We abandoned the old, "reflexive" application of the doctrine, and imposed a more rigorous weighing of its costs and deterrence benefits. In a line of cases beginning with *United States v Leon*, 468 US 897; 104 S Ct 3405; 82 L Ed 2d 677 [(1984)], we also recalibrated our cost-benefit analysis in exclusion cases to focus the inquiry on the "flagrancy of the police misconduct" at issue.

The basic insight of the *Leon* line of cases is that the deterrence benefits of exclusion "var[y] with the culpability of the law enforcement conduct" at issue. When the police exhibit "deliberate," "reckless," or "grossly negligent" disregard for Fourth Amendment rights, the deterrent value of exclusion is strong and tends to outweigh the resulting costs. But when the police act with an objectively "reasonable good-faith belief" that their conduct is lawful, or when their conduct involves only simple, "isolated" negligence, the "'deterrence rationale loses much of its force,'" and exclusion cannot "pay its way."

The Court has over time applied this "good-faith" exception across a range of cases. *Leon* itself, for example, held that the exclusionary rule does not apply when the police conduct a search in "objectively reasonable reliance" on a warrant later held invalid. . . .

Other good-faith cases have sounded a similar theme. *Illinois v Krull*, 480 US 340; 107 S Ct 1160; 94 L Ed 2d 364 (1987), extended the good-faith exception to searches conducted in reasonable reliance on subsequently invalidated statutes. In *Arizona v Evans*[, 514 US 1; 115 S Ct 1185; 131 L Ed 2d 34 (1995)], the Court applied the good-faith exception in a case where the police reasonably relied on erroneous information concerning an arrest warrant in a database maintained by judicial employees. Most recently, in *Herring v United States*, 555 US 135; 129 S Ct 695; 172 L Ed 2d 496 [(2009)], we extended *Evans* in a case where *police* employees erred in maintaining records in a warrant database. "[I]solated," "nonrecurring" police negligence, we determined, lacks the culpability required to justify the harsh sanction of exclusion.

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Indeed, in 27 years of practice under *Leon*'s good-faith exception, we have "never applied" the exclusionary rule to suppress evidence obtained as a result of nonculpable, innocent police conduct. [Citations omitted.]

The *Davis* Court held that when the police conduct a search in objectively reasonable reliance on appellate precedent that is binding, the exclusionary rule is inapplicable. *Davis*, 131 S Ct at 2423-2424.

The principles and sentiments expressed in *Davis* and found in the quoted passage above were also expressed by our Supreme Court in *People v Frazier*, 478 Mich 231, 247-251; 733 NW2d 713 (2007). The *Frazier* Court stated that "application of the exclusionary rule is inappropriate in the absence of governmental misconduct." *Id.* at 250.

Here, the only police conduct that is deterred by applying the exclusionary rule is conduct in which the police, having at least some indicia of need, enter a home in a good-faith effort to check on the welfare of a citizen after a concerned neighbor contacted police. This is not the type of police conduct that we should be attempting to deter. The lower court rulings excluding the evidence and dismissing the charge would not deter police misconduct in the future; it would only deprive citizens of helpful and beneficial police action. The benefits of suppression are clearly outweighed by the heavy cost suffered by the community. The record does not reflect any police misconduct, nor does it indicate that officer Emmi and his partner engaged in or exhibited deliberate, reckless, or grossly negligent disregard for Fourth Amendment rights. Findings of such behavior cannot even be inferred from the existing record. Had there been little to no basis to enter defendant's house, or had there been some indication that the officers were motivated by hopes of finding criminal activity afoot, then one might be able to infer or find misconduct or deliberate, reckless, or grossly negligent disregard for the Fourth Amendment. But such was not the case here. Rather, the record establishes that the police officers acted with an objectively reasonable good-faith belief that their conduct was lawful. They did not burst into defendant's home absent an assessment of the situation or absent alternative efforts to communicate with the homeowner. Instead, they spoke with defendant's neighbor, assessed the situation based on her comments and their personal observations, and then first tried to communicate with any person inside the house before deciding that entry was necessary. At worst, the officers' conduct involved simple, isolated, and nonrecurring negligence. There is no indication that the police used the neighbor's concerns as a ruse or subterfuge to search defendant's home in an effort to find evidence of criminal wrongdoing. The officers' conduct was innocent and lacked the culpability required to justify the harsh sanction of exclusion. Accordingly, even were we to assume that the community caretaker exception did not apply and that a constitutional violation occurred, exclusion of the marijuana was not required and thus the charge should not have been dismissed.

Reversed and remanded for reinstatement of the marijuana manufacturing charge. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ William C. Whitbeck