

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**ON APPEAL FROM THE COURT OF APPEALS
Talbot, P.J., and Cavanagh and Zahra, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,**

vs

Supreme Court No. 136591

**JEREMY FISHER,
Defendant-Appellee.**

**Lower Court No. 04-0969
Court of Appeals No. 276439**

**PLAINTIFF-APPELLANT'S
BRIEF ON APPEAL**

ORAL ARGUMENT REQUESTED

KYM WORTHY
Prosecuting Attorney
County of Wayne

TIMOTHY A. BAUGHMAN
Chief of Research, Training,
and Appeals

DAVID A. McCREEDY (P56540)
Assistant Prosecuting Attorney
1441 St. Antoine, 11th Floor
Detroit, Michigan 48226
(313) 224-3836

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MISCELLANEOUS

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STATEMENT OF JURISDICTION

This Court has jurisdiction by virtue of its October 3, 2008 order granting leave to appeal.

STATEMENT OF QUESTIONS PRESENTED

I.

Police officers may enter a home without a warrant if they reasonably believe someone inside may be in need of immediate assistance. In responding to a reported disturbance, police officers here discovered (1) a smashed truck, with fresh blood inside and out, near broken fence posts, (2) a house with broken windows and blood on the door, (3) an unknown man inside who was screaming and breaking things and who refused to identify himself. Was it reasonable for the police enter the home without a warrant?

The trial court answered: “No.”

The Court of Appeals answered: “No.”

The defendant would answer: “No.”

The People answer: “Yes.”

II.

Regardless whether a warrantless entry into a residence is justified, the occupants of the house may not assault the entering police, and if they do the officer’s testimony about the assault is admissible because it is not an exploitation of the illegal entry. As Officer Goolsby was attempting to enter defendant’s house, defendant aimed a gun at him. Is Goolsby’s testimony regarding defendant’s assault admissible?

The trial court answered: “No.”

The Court of Appeals answered: “No.”

The defendant would answer: “No.”

The People answer: “Yes.”

STATEMENT OF FACTS

On October 31, 2003, Brownstown Township police officers responded to a complaint of a disturbance in the area of Steven Road and Allen Road in Brownstown.¹ Officer Christopher Goolsby of the Brownstown Police Department testified at a suppression hearing that, while en route, he and his partner were stopped by two citizens who were out walking. The female of the pair indicated that a man over on Allen Road was “going crazy,” and she directed the officers to the location.²

Upon arriving at the Allen Road address, Officer Goolsby observed the following: a pickup truck in the driveway with its front end smashed, knocked-down fence posts along the side of the property,³ fresh blood on the hood of the truck, and blood on clothes inside the truck.⁴ Goolsby also noticed that three of the windows to the house there were broken, with glass still on the ground.⁵ There was more blood on the back door to the house.⁶ Goolsby concluded from the above that someone inside was obviously hurt.⁷

¹Plaintiff-Appellant’s Appendix at 21a.

²Id. at 23a-24a.

³Id. at 25a.

⁴Id. at 26a.

⁵Id. at 27a.

⁶Id.

⁷Id. at 28a.

The only person officers could see from outside of the home was defendant, who was inside screaming and throwing things.⁸ Although Officer Goolsby could not tell at the time what defendant was throwing, he could hear items breaking.⁹ Moreover, Goolsby did not know if the house in question was defendant's residence,¹⁰ and defendant refused to come to the door or identify himself.¹¹ Neither would he indicate what the problem was or answer whether he or anyone else needed medical attention.¹² Instead, he repeatedly swore at the officers and told them to get a warrant.¹³ Goolsby was not sure at the evidentiary hearing, since three years had passed since the incident, but he believed that defendant did have a cut on his hand.¹⁴

Given the circumstances, the officers called the detective bureau to determine their next course of action.¹⁵ They were advised to enter the residence to determine (a) if someone else inside was severely injured, and (b) whether defendant was the homeowner or an intruder.¹⁶ Defendant had locked the back door, so Goolsby went to the front door and pushed on it, but he couldn't get it open

⁸Id. at 24a.

⁹Id. at 25a.

¹⁰Id.

¹¹Id. at 25a, 28a.

¹²Id. at 28a.

¹³Id.

¹⁴Id.

¹⁵Id. at 29a (by this time, the patrol officers had been joined by a sergeant).

¹⁶Id. at 30a, 51a-52a. This point was made in part via an offer of proof, given the trial court's ruling that Officer Goolsby's motivation for attempting to enter the home was irrelevant, see id. at 29a.

far enough to enter because defendant had barricaded it with a couch.¹⁷ The officer could see inside, however, and a dog's bark drew his attention to a bedroom on his right.¹⁸ When Goolsby looked in that direction, defendant pointed a rifle at him.¹⁹ Goolsby pulled his head back, and made no more attempts to enter until a warrant was secured.²⁰

Defendant was charged with felonious assault and felony firearm based on these facts, and was bound over for trial. In circuit court, Judge Thomas Jackson granted defendant's motion to quash the information, despite the fact that he had waived his preliminary examination. Judge Jackson held that the police illegally opened defendant's door and that any evidence obtained after the illegal entry—that is, Officer Goolsby's view of defendant pointing a gun at him—must be suppressed.²¹ Because there was no other evidence of defendant's criminal conduct, the trial court dismissed the charges.²²

The People appealed, and a divided panel of the Court of Appeals reversed and remanded, holding that Judge Jackson erred by ruling on defendant's motion without the benefit of an evidentiary hearing.

On remand, Judge Jackson again suppressed the evidence, ruling after taking testimony that the entry could not be justified under the emergency circumstances exception to the warrant

¹⁷Id. at 30a-31a.

¹⁸Id. at 31a-32a.

¹⁹Id. at 32a.

²⁰Id.

²¹Id. at 11a.

²²Id. at 9a.

requirement of the Fourth Amendment.²³ In so ruling, Judge Jackson adopted Judge Borrello's dissent in the Court of Appeals, reading from that opinion verbatim:

Plaintiff cites no authority for the proposition that whenever the police have a basis for supposing that a person has been injured, they are entitled to enter that person's home without a warrant ostensibly to provide aid. Further, there is no indication that the police inquired about defendant's condition, or observed any injury about him. . . . Nor is there any suggestion that the police ever suspected that someone else in the house may have been injured. . . . Moreover, the actions of the police in neither persisting with the search, nor calling for medical assistance, but instead leaving the premises to seek a warrant, were not consistent with actually fearing that they were confronting a serious injury that demanded immediate aid.²⁴

The Court of Appeals again granted leave to appeal, and, in a two to one ruling, upheld the trial court.²⁵ According to the per curiam opinion, "the mere drops of blood did not signal a likely serious, life-threatening injury" and thus the attempted entry violated defendant's Fourth Amendment rights. On May 15, 2008, the same panel rejected the People's motion for reconsideration. This Court then granted the People's application for leave to appeal.

²³Id. at 46a.

²⁴Id. at 49a-50a.

²⁵Id. at 12a-14a.

SUMMARY OF ARGUMENT

Because the police reasonably believed that defendant or someone else within the house he was in may have needed immediate medical aid, officers did not need a warrant to open the front door, and they did not violate defendant's constitutional rights upon doing so. Cases from nearly every jurisdiction in the country demonstrate that when a reasonable inference exists that someone inside a dwelling may need immediate aid, the police may enter without a warrant to provide that assistance. A review of the fact patterns in these cases demonstrates that the threshold for entry is low, and that it was met in this case. Moreover, while the *legal* landscape is much more uneven, a careful analysis of the relevant precedents shows that, because the entry in these cases is not seizure-directed, the warrant clause of the Fourth Amendment is not implicated, and thus the standard for entry is not probable cause, but reasonable suspicion. But even if Officer Goolsby's warrantless entry required probable cause, the circumstances here rose to at least that level. Thus, no matter what analysis is employed, Judge Jackson erred in finding that Officer Goolsby's entry violated the Fourth Amendment, and his ruling must be reversed.

Additionally, even if the officer's entry was unlawful, he did not exploit that illegality by having defendant assault him with a dangerous weapon. Again, jurisdictions around the country consistently hold that independent crimes committed in response to a Fourth Amendment violation may not be suppressed. Any other rule would authorize residents to engage in any level of violence against entering officers, if it turned out that the entry was unjustified. This cannot be.

ARGUMENT

I.

Police officers may enter a home without a warrant if they reasonably believe someone inside may be in need of immediate assistance. In responding to a reported disturbance, police officers here discovered (1) a smashed truck, with fresh blood inside and out, near broken fence posts, (2) a house with broken windows and blood on the door, (3) an unknown man inside who was screaming and breaking things and who refused to identify himself. It was reasonable for the police enter the home without a warrant.

Standard of Review:

There should be little doubt as to the applicable standard of review in this circumstance: the trial court's findings of historical fact are reviewed for clear error, while the validity of the legal standard it used and the application of the legal standard to the historical facts are reviewed *de novo*.²⁶ The US Supreme Court has said exactly that, in the Fourth Amendment search-and-seizure context:

[D]eterminations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal [but] a reviewing court should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers.²⁷

As this Court noted in its order granting leave in this case, however, several US Circuit Courts of Appeals, including the Tenth Circuit, seem to employ a slightly altered version of this standard of review, where they purport to “*view the evidence in the light most favorable to the government*,” accept the district court's findings of fact unless clearly erroneous, and review *de novo*

²⁶*People v Attebury*, 463 Mich 662, 668 (2001). See also *Ornelas v US*, 517 US 690,696-98, 116 S Ct 1657 (1996).

²⁷*Ornelas*, 517 US at 699, 116 S Ct at 1663.

the ultimate determination of reasonableness under the Fourth Amendment.”²⁸ But this simply means that, *where the trial court has denied a motion to suppress*, the facts are to be viewed in the light that favors or supports that ruling. That is, if one follows *Gambino-Zavala*’s light-most-favorable citation thread back to its origins, it is evident that all the Tenth Circuit means is that it views the evidence “in the light most favorable *to the district court’s determination*.”²⁹

But a review of *US v Wood* (working backwards, the first place one would find this connection clearly set forth) demonstrates that the Court of Appeals means nothing different by its light-most-favorable analysis than the US Supreme Court articulated in *Ornelas*. That is, in *Wood*, the appellate panel reversed the district court’s ruling that reasonable suspicion existed for detaining the defendant. Even though it purportedly viewed the facts in the light most favorable to the government, the court of appeals *rejected* the inferences drawn by the district court—that because Wood had flown to California, rented a car, driven back to Kansas in that car (supposedly to view parts of the country he had never seen before), initially gave the wrong city when asked where he had rented the car, had open maps and fast-food sacks inside the car, appeared nervous, and had an 11-year-old felony narcotics conviction, reasonable suspicion existed to detain him while a canine unit sniffed the car for drugs.³⁰ These facts and the inferences therefrom, even taken in the light most favorable to the government, still did not justify Wood’s detention. In other words, neither *Gambino-Zavala*, its forebears in the Tenth Circuit, or its cousins in other federal courts of appeals

²⁸*US v Gambino-Zavala*, 539 F3d 1221, 1225 (2008) (emphasis added) (quoting *US v Apperson*, 441 F3d 1162, 1184 (CA 10, 2006)).

²⁹*US v Wood*, 106 F3d 942, 945 (CA 10, 1997) (emphasis added).

³⁰*Id.* at 946-48.

authorize or require any extra deference to the trial court's findings of fact or its application of the Fourth Amendment. In fact, where the facts are unconstested as they are here, both state and federal courts across the country employ plenary review.

Discussion:

Because the police reasonably believed that defendant or someone else within the house he was in may have needed immediate medical aid, officers did not need a warrant to open the front door, and they did not violate defendant's constitutional rights upon doing so. Cases from nearly every jurisdiction in the country demonstrate that when a reasonable inference exists that someone inside a dwelling may need immediate aid, the police may enter without a warrant to provide that assistance. A review of the fact patterns in these cases demonstrates that the threshold for entry is low, and that it was met in this case. Moreover, while the *legal* landscape is much more uneven, a careful analysis of the relevant precedents shows that, because the entry in these cases is not seizure-directed, the warrant clause of the Fourth Amendment is not implicated, and thus the standard for entry is not probable cause, but reasonable suspicion. But even if Officer Goolsby's warrantless entry required probable cause, the circumstances here rose to at least that level. Thus, no matter what analysis is employed, Judge Jackson erred in finding that Officer Goolsby's entry violated the Fourth Amendment, and his ruling must be reversed.

A. Factually, when the police reasonably believe that someone may be inside a residence needing emergency aid, courts uniformly uphold their warrantless entry.

The recent US Supreme Court case of *Brigham City v Stuart*, 547 US 398, 126 S Ct 1943 (2006), is a good place to begin in demonstrating that—whatever abstract legal framework a reviewing court may apply—the real-life certainty is that police officers can enter a home when they

reasonably believe someone inside may need emergency assistance. In *Brigham City*, officers responded to a 3 a.m. complaint about a loud party. Upon arrival, they heard shouting from inside the subject house, and, proceeding around back to investigate, observed an altercation through a screen door and windows. More specifically, they watched as a juvenile, being restrained by four adults, broke free and punched one of the adults in the face. The police then saw the adult spit blood into the sink. As the adults tried to regain control over the juvenile, the police entered through the screen door and stopped the melee. Once inside, they discovered evidence with which to charge some of the adults with contributing to the delinquency of a minor, disorderly conduct, and intoxication. Those charged attempted to have the evidence suppressed because the police had entered without a warrant, and all the Utah courts, from the trial court to the Utah Supreme Court, agreed.³¹

A unanimous US Supreme Court reversed, holding that exigent circumstances—namely the need to provide emergency aid—justified the entry.³² That is, although the Fourth Amendment normally requires that a search warrant be issued before the police can enter a private home, the warrant requirement is subject to exceptions.³³ One such exception arises when the police are called on “to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.”³⁴ This is true even when the police also intend, upon entering, to investigate crime. As the

³¹*Id.* at 400-01, 1946.

³²*Id.* at 406, 1949.

³³*Id.* at 403, 1947.

³⁴*Id.* (Actually, emergency aid is not an exception to the warrant requirement. It falls outside the warrant clause of the Fourth Amendment, but within the reasonableness clause, as explained in section B, *infra*. This is in part because it is not usually possible to demonstrate

Court had pointed out numerous times, the subjective motivations of police officers are irrelevant in the Fourth Amendment context.³⁵ What matters is whether, objectively speaking, their actions were reasonable under the circumstances.³⁶ And, it is objectively reasonable for the police to enter a home where they observe ongoing violence toward one of the occupants.³⁷

Moreover, according to the *Brigham City* Court, it did not matter that the victim might not *actually* need help, having suffered what apparently was only a bloody lip. To the contrary, “the officers had an objectively reasonable basis for believing both that the injured adult *might* need help and that the violence in the kitchen was just beginning.”³⁸ Because reasonableness is “the ultimate touchstone of the Fourth Amendment,”³⁹ and because the officers’ entry was reasonable under the circumstances, it was justified under the emergency assistance doctrine.⁴⁰

Cases from the US Courts of Appeals and state supreme courts around the country confirm the implicit holding of *Brigham City*: that any reasonable inference that someone inside a dwelling may need emergency assistance justifies a warrantless entry. *US v Najar*, 451 F3d 710 (CA 10, 2006), is one example. A police dispatcher had received an early-morning 911 call, but the caller said nothing and hung up. The dispatcher then called the number back several times, only to have

probable cause.)

³⁵*Id.* at 404, 1948 (see cases cited therein).

³⁶*Id.* at 404-05, 1948.

³⁷*Id.* at 405-06, 1949.

³⁸*Id.* at 406, 1949 (emphasis added).

³⁹*Id.* at 403, 1947.

⁴⁰*Id.* at 406, 1949.

the caller silently answer the phone and repeatedly hang up. Officers sent to investigate knocked on the door of the mobile home and, although no one answered, a person could be seen and heard moving around inside. Eventually, the defendant answered the door, but he denied making the call and maintained that there was no one else inside.⁴¹ Despite the defendant's representations that nothing was wrong, and his objection to the officers' request to come in, the police entered in order to determine if someone else was inside and, if so, whether they needed immediate aid. Once inside, the officers found an illegal shotgun. The court found, under the circumstances, that "the officers had reasonable grounds to believe someone inside the trailer *may* have been in need of emergency aid" and thus the warrantless entry was permissible.⁴²

Similarly, the Eleventh Circuit ruled in *US v Holloway*, 290 F3d 1331 (2002), that the police could enter the defendant's home without a warrant because they were looking for a possible shooting victim, even though they had no information that anyone had actually been shot or even that someone they had not already seen was in the house. In that case, the officers responded to two 911 reports of gunshots fired. Arriving at the defendant's residence, they found him and his wife on the porch. Neither was injured. As the couple was being ordered off the porch, a child appeared in the doorway, uninjured, who was ordered back inside. Once the defendant and his wife had been secured, one of the officers entered the house to check for victims and weapons, finding an illegal shotgun but no one who was hurt.⁴³ The Court of Appeals upheld the warrantless entry, finding that

⁴¹*Najar, supra*, at 712.

⁴²*Id.* at 720 (emphasis added).

⁴³*Holloway, supra*, at 1332-33.

“the *possibility* of a gunshot victim lying prostrate in the dwelling created an exigency necessitating immediate search.”⁴⁴

Nearly every other circuit has a similar case. In the Ninth, for example, the police were justified in entering a defendant’s home when his ex-girlfriend (whom they had agreed to help retrieve her belongings from the defendant’s apartment after he had beaten her up that morning) was not present when they arrived, but the defendant was.⁴⁵ Reasonably believing that the defendant could have surprised the ex-girlfriend, dragged her back into the apartment, beaten her, and left her severely injured, the police went in to look for her even though they did not have a warrant, and the court found this proper.⁴⁶ In the Eighth, officers reasonably believed a shooting victim could have been inside the defendant’s apartment, after neighbors had heard several shotgun blasts emanating from the apartment, even though the defendant had told them there was no one in the apartment, and the officers had no contrary information.⁴⁷ “Viewing the circumstances objectively, these facts create clear justification for a reasonable law-enforcement officer to enter the apartment without a warrant to secure the shotgun and to discern if the shooter or any victims in need of medical attention remained inside.”⁴⁸ It is clear from these and other cases⁴⁹ that officers may make a warrantless entry

⁴⁴*Id.* at 1338 (emphasis added).

⁴⁵*US v Black*, 482 F3d 1035, 1039 (CA 9, 2007).

⁴⁶*Id.*

⁴⁷*US v Valencia*, 499 F3d 813, 814-15 (CA 8, 2007).

⁴⁸*Id.* at 816.

⁴⁹See, for example, *US v Klump*, 536 F3d 113, 118 (CA 2, 2008) (smell of something burning); *West v Keef*, 479 F3d 757, 759 (CA 10, 2007) (12-year-old boy called 911 to report that his mother was “going crazy” and was “trying to kill herself”); *US v Martins*, 413 F3d 139, 148

into a home if there is *any* reasonable inference that someone may be injured inside, even in the face of contrary indications that no one is hurt.

At the risk of belaboring the point, the People note that cases decided in the highest state courts around the country are no different. For example, citing *Brigham City v Stuart*, Nebraska’s Supreme Court upheld a warrantless entry of the defendant’s home because a neighbor had heard a loud bang and seen two likely burglars flee the house.⁵⁰ The officers could reasonably believe that additional suspects or occupants remained in the house, needing assistance, despite the fact that two men had already been seen leaving, and the neighbor indicated that the homeowners were gone.⁵¹ According to the high court, “the officers could not be sure that no one remained inside,”⁵² and thus were justified in entering. Similarly, in Wyoming, officers validly entered the home of a paramedic, half an hour after receiving a garbled transmission from her, because there had been some urgency in her voice and no one answered her door when the police knocked.⁵³

And in a case with remarkably similar facts as this one, the South Dakota Supreme Court upheld a warrantless entry of an apartment house because—while investigating a report of a possible burglary in progress—the police found a resident outside the building with a fresh cut on his hand

(CA 1, 2005) (young boy answered door to apartment, and officers saw it was filled with marijuana smoke); *US v Goree*, 361 US App DC 161, 365 F3d 1086 (2004) (report that man had dragged woman into apartment by her hair); *US v Reed*, 935 F2d 641, 643 (CA 4, 1991) (officers saw unresponsive person through window, next to sawed-off shotgun).

⁵⁰*State v Eberly*, 716 NW2d 671, 678 (Neb, 2006).

⁵¹*Id.* at 680.

⁵²*Id.*

⁵³*Moulton v State*, 148 P3d 38, 41, 44 (Wy, 2006).

and blood on his clothing.⁵⁴ The man, Corbine, claimed that he lived in the apartment building, but his driver's license listed another address. And, although he maintained that his girlfriend of six months was currently in the apartment, he could not initially remember her name. Additionally, the officers noticed that a window to the apartment was broken. Although Corbine had a key to the apartment which he produced for the officers, they still reasonably suspected that he could be a burglar, and that a "possible assault victim" may have been inside.⁵⁵ Given this, "the police officers were objectively justified in entering the house and apartment in order to check on the well-being of persons inside."⁵⁶

Far from being the exception, cases like this—where the police reasonably fear that someone inside *might* be injured, without any *actual* knowledge that anyone is *actually* inside or that anyone is *actually* injured—are common across the country. State supreme courts in California,⁵⁷ New

⁵⁴*State v Bowker*, 754 NW2d 56 (SD, 2008).

⁵⁵*Id.* at 60.

⁵⁶*Id.* at 64.

⁵⁷*People v Ray*, 981 P2d 928 (1999) (officers saw through open door of residence that it looked ransacked, and reasonably believed that burglars may have left behind an injured occupant).

York,⁵⁸ Ohio,⁵⁹ Massachusetts,⁶⁰ Minnesota,⁶¹ and others⁶² have followed suit. Here, Brownstown police officers reasonably believed that defendant or someone else inside the Allen Road home might be injured and in need of assistance. They were thus justified in attempting to enter.

B. Because emergency-aid searches are not seizure-directed, the warrant clause of the Fourth Amendment does not apply, but rather the “reasonableness clause,” and so an officer’s warrantless emergency-aid entry is justified as long as it is objectively reasonable.

As noted above, merely looking at the factual underpinnings of these emergency entry cases it is clear that, whatever legal regimen is employed, entries that are reasonable under the circumstances do not violate the Fourth Amendment. Unfortunately, while the end result rarely varies, the legal justifications given in upholding these entries are all over the board. Specifically, courts are in conflict as to (a) whether probable cause or reasonable suspicion should be the standard necessary to justify entry, and (b) whether these cases fall under the exigent circumstances exception to the warrant requirement, whether they are justified by distinct police functions of “community

⁵⁸*People v Mitchell*, 347 NE2d 607 (1976) (search of every room in hotel, including defendant’s, reasonable to find missing maid).

⁵⁹*State v Applegate*, 626 NE2d 942 (1994) (responding to report of domestic violence, officers heard “noises indicating that violent activity was occurring inside.”)

⁶⁰*Massachusetts v Young*, 416 NE2d 944 (1981) (after finding dead body, blood trail led police to defendant’s apartment).

⁶¹*State v Lemieux*, 726 NW2d 783 (2007) (house near homicide scene had torn window screen with window pushed up, police heard music skipping inside, and no one answered their yells inside).

⁶²See, among others, *Blake v State*, 954 A2d 315 (Del, 2008) (officers outside a suspect’s apartment heard a boom, and entered when a baby’s crying inside turned to a “blood curdling scream”); *State v Bookheimer*, 656 SE2d 471 (W Va, 2007) (investigating a report of domestic violence with shots fired, officers found the agitated defendant outside; although she told them there was nothing wrong, their entry to see if her co-tenant might be injured was reasonable).

caretaker” or “emergency aid provider,” or whether some combination of the three applies. But as this court alluded to in *People v Davis*, 442 Mich 1 (1993), the only principled and logically consistent analysis of this issue holds that, because the searches in these cases are aimed at helping potentially injured victims, they are not “seizure directed,” and thus their legality must be analyzed outside the exigent circumstances exception to the warrant requirement.⁶³ It follows, then, that emergency entries fall under the community caretaking function of the police, and that function properly authorizes entry into private dwellings based on reasonable suspicion that a person may need emergency aid inside.

The text of the Fourth Amendment itself supports this proposition, because it is comprised of two clauses—a reasonableness clause and a warrant clause:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The warrant clause requires that seizure-directed searches be supported by probable cause, that the police particularly describe the place to be searched and the persons or things to be seized, and that they obtain a warrant before entering a private dwelling or detaining a person. Thus, when the police are acting in an investigative capacity searching for evidence of a crime, they must obtain a warrant before entering a home, unless one of several enumerated exigent circumstances prevents them from doing so in a timely manner. But the first clause—the so-called “reasonableness clause”—provides that non-seizure directed searches are invalid only if unreasonable. In other words, when the police

⁶³*Davis, supra*, at 24.

are fulfilling other functions (such as safeguarding the community), and in so doing need to enter a private home, they may do so without violating the Fourth Amendment as long as the entry is reasonable under the circumstances. In fact, in most emergency-entry cases, probable cause cannot possibly be shown, as the police cannot specifically describe in advance items they plan to seize: it is not their purpose to seize *anything*.

Unfortunately, a majority of the US Supreme Court has not yet explicitly recognized the distinction between the warrant and reasonableness clauses, and this lack of authority has resulted in much confusion among lower courts. Although these lower courts instinctively recognize that it makes no sense to require probable cause to believe that a crime has been committed and that evidence of that crime will be found in the place to be searched when the police are merely trying to render emergency assistance, the Supreme Court has never fully developed this point, or articulated a principled basis for distinguishing emergency entries from the normal warrant requirement.

As a result, in some jurisdictions, the police are told they need probable cause to enter a house to render emergency aid, but that this standard is met whenever officers reasonably believe someone inside may be in need of aid.⁶⁴ In others, the standard is simply objective reasonableness, but no principled justification is given for this rule.⁶⁵ In a third group, objective reasonableness

⁶⁴See, e.g., *US v Troop*, 514 F3d 405 (CA 5, 2008); *US v Poe*, 462 F3d 997 (CA 8, 2006); *US v Holloway*, 290 F3d 1331 (CA 11, 2002); *Moulton v State*, 148 P3d 38 (Wy, 2006).

⁶⁵See, e.g., *State v Meeks*, 262 SW3d 710 (Tenn, 2008); *State v Bowker*, 754 NW2d 56 (SD, 2008); *US v Klump*, 536 F3d 113 (CA 2, 2008); *US v Gambino-Zavala*, 539 F3d 1221 (CA 10, 2008); *US v Snipe*, 515 F3d 947 (CA 9, 2008); *US v Bell*, 500 F3d 609 (CA 7, 2007); *US v Valencia*, 499 F3d 813 (CA 8, 2007); *US v Black*, 482 F3d 1035 (CA 9, 2007); *US v Najar*, 451 F3d 710 (CA 10, 2006); *US v Goree*, 361 US App DC 161, 365 F3d 1086 (2004); *People v Ray*,

justifies the entry, but probable cause must be shown to “associate the emergency with the area or place to be searched.”⁶⁶ Again, this appears to be a framework created out of thin air. In a fourth category, even *unreasonable* searches may be permitted as long as there is no possibility that the police are involved in crime fighting.⁶⁷ Finally, some jurisdictions seem unable to settle on a rule, holding alternatively that mere reasonableness suffices, and then that probable cause is necessary.⁶⁸

This disparity is also evident in how courts relate emergency aid circumstances to the warrant requirement. In many states and circuits, an emergency is simply one of a number of recognized exigent circumstances justifying a warrantless entry.⁶⁹ In others, emergency entries are part of the

981 P2d 928 (Cal, 1999); *State v Applegate*, 626 NE2d 942 (Ohio, 1994); *US v Reed*, 935 F.2d 641 (CA 4, 1991).

⁶⁶See *State v Gill*, 755 NW2d 454 (ND, 2008); *Blake v State*, 954 A2d 315 (Del, 2008); *State v Lemieux*, 726 NW2d 783 (Minn, 2007); *Guererri v State*, 922 A2d 403 (Del, 2007); *State v Eberly*, 716 NW2d 671 (Neb, 2006); *Couden v Duffy*, 446 F3d 483 (CA 3, 2006); *US v Martins*, 413 F3d 139 (CA 1, 2005); *People v Mitchell*, 347 NE2d 607 (NY, 1976).

⁶⁷See, e.g., *State v Ryon*, 108 P3d 1032 (NM, 2005).

⁶⁸Compare *People v Davis*, 442 Mich 1 (1993) (sound of gunfire would justify entry into motel room as part of community caretaking function because reasonable under the circumstances) with *In re Forfeiture of \$176,598*, 443 Mich 261 (1993) (late night security alarm at private dwelling, light on inside home, broken window, security bars pushed aside, and lug wrench, bar, and skull cap under the window not sufficient to justify emergency entry under community caretaking; instead justified only under exigent circumstances, thus requiring probable cause).

⁶⁹See, e.g., *State v Bowker*, 754 NW2d 56 (S.D., 2008); *US v Gambino-Zavala*, 539 F3d 1221 (CA 10, 2008); *US v Snipe*, 515 F3d 947 (CA 9, 2008); *US v Klump*, 536 F3d 113 (CA 2, 2008); *US v Valencia*, 499 F3d 813 (CA 8, 2007); *US v Bell*, 500 F3d 609 (CA 7, 2007); *Couden v Duffy*, 446 F3d 483 (CA 3, 2006); *US v Poe*, 462 F3d 997 (CA 8, 2006); *US v Najar*, 451 F3d 710 (CA 10, 2006); *US v Goree*, 365 F3d 1086 (CA D.C., 2004); *State v Applegate*, 626 NE2d 942 (Ohio, 1994); *US v Reed*, 935 F2d 641 (CA 4, 1991).

community caretaking exception, which is a different branch from exigent circumstances.⁷⁰ Other places recognize a separate “emergency aid doctrine,” either as a discrete subset of exigent circumstances,⁷¹ as a subset of community caretaking,⁷² or as its own branch of the warrant-exceptions tree.⁷³ Still others consider community caretaking and emergency aid to be interchangeable terms.⁷⁴ Obviously, the lack of a coherent constitutional framework for understanding how and why the police may enter private homes to provide emergency aid has resulted in much confusion.

While this court’s decision in *People v Davis*⁷⁵ began to provide some clarity in this area, the *Davis* opinion did not fully resolve these issues. And, shortly after *Davis* was issued, this court seemed to take a different approach in *In re Forfeiture of \$176,598*.⁷⁶ In *Davis*, officers were dispatched to investigate a report of shots fired at the Belmar Motel in Detroit. The report supposedly came from the hotel clerk, who claimed that the shots originated in either room 33 or 34.

⁷⁰See, e.g., *State v Gill*, 755 NW2d 454 (ND, 2008); *State v Lemieux*, 726 NW2d 783 (Minn, 2007); *State v Ryon*, 108 P3d 1032 (NM, 2005); *People v Ray*, 981 P2d 928 (Cal, 1999).

⁷¹See, e.g., *State v Meeks*, 262 SW3d 710 (Tenn, 2008); *US v Troop*, 514 F3d 405 (CA 5, 2008); *State v Eberly*, 716 NW2d 671 (Neb, 2006); *US v Martins*, 413 F3d 139 (CA 1, 2005); *US v Holloway*, 290 F3d 1331 (CA 11, 2002).

⁷²See, e.g., *State v Ryon*, 108 P3d 1032 (NM, 2005), *People v Ray*, 981 P2d 928 (Cal, 1999); *People v Mitchell*, 347 NE2d 607 (NY, 1976).

⁷³See, e.g., *Blake v State*, 954 A2d 315 (Del, 2008); *US v Black*, 482 F3d 1035 (CA 9, 2007), *Guererri v State*, 922 A2d 403 (Del, 2007); *Moulton v State*, 148 P3d 38 (Wy, 2006).

⁷⁴See, e.g., *State v Lemieux*, 726 NW2d 783 (Minn, 2007); *State v Gill*, 755 NW2d 454 (ND, 2008).

⁷⁵442 Mich 1 (1993).

⁷⁶443 Mich 261 (1993).

Notably, however, the person claiming to be the clerk had given the wrong name for the motel and was unable to give the address or cross street. Without verifying the call with the actual clerk once they arrived, the officers went to room 33, and saw the defendant peek out from behind the curtains. Despite the officers' repeated knocking and announcing their presence, the defendant did not open the door for three to five minutes. Suspecting that she was trying to hide something, the police entered her room once she finally did open the door.⁷⁷

In analyzing the propriety of the officers' entry, this court made two astute and eminently helpful observations. First, the court pointed out that neither the community caretaking function or its emergency aid subcategory falls under the exigent circumstances rubric, because exigent circumstances searches are seizure directed, whereas community caretaking and emergency aid searches are not.⁷⁸ Second, the *Davis* court recognized that, again because emergency searches are not seizure directed, such searches do not require probable cause or a warrant.⁷⁹ Instead, the police may enter a dwelling in an emergency if they reasonably believe there is someone inside who may need immediate aid.⁸⁰

Although *Davis* did hold that objective reasonableness is the proper standard for emergency entries, it did not specifically identify the reasonableness/warrant clause dichotomy as the source of the difference in the legal requirements for seizure- and non-seizure directed searches.⁸¹ Thus,

⁷⁷*Davis, supra*, at 3-4.

⁷⁸*Id.* at 24-25.

⁷⁹*Id.* at 20, 25.

⁸⁰*Id.* at 17, 25.

⁸¹*Id.* at 13.

instead of looking directly to the Fourth Amendment for its analysis, the *Davis* opinion cited *Mincey v Arizona*, 437 US 385, 98 S Ct 2408 (1978) for the proposition that emergency-aid searches need only be reasonable.⁸² But neither *Mincey* nor the precedent cited there (cases recognizing the emergency aid doctrine) identified or relied on the reasonableness clause,⁸³ despite the fact that three Supreme Court justices had done so just one month before *Mincey* was issued in June of 1978.⁸⁴

That is, according to Justice Stevens, joined by Justices Blackmun and Rehnquist:

The Fourth Amendment contains two separate Clauses, each flatly prohibiting a category of governmental conduct. The first Clause states that the right to be free from unreasonable searches “shall not be violated”; the second unequivocally prohibits the issuance of warrants except “upon probable cause.” In this case the ultimate question is whether the category of warrantless searches authorized by the statute is “unreasonable” within the meaning of the first Clause.⁸⁵

Looking to the actual text of the Fourth Amendment grounds the emergency-aid framework in the reasonableness clause. Granted, Justice Stevens’ two-clause analysis has never been explicitly followed by the full Court. But that did not stop the New Jersey Supreme Court in 1979 from identifying the difference between the clauses at issue:

When the warrant clause is thus read as merely stating the reasonableness standard to be applied in a particular factual setting, the first clause can then be seen as embodying the ultimate standard against which to determine the legality of searches and seizures. When confronted with purposes, objects or circumstances not envisioned by the framers, the wiser, and indeed the proper course is to apply the

⁸²*Davis, supra*, at 13.

⁸³437 US at 392, 98 S Ct at 2413.

⁸⁴See *Marshall v Barlow's, Inc.*, 436 US 307, 325-26, 98 S Ct 1816 (May 23, 1978) (Stevens, J., dissenting, joined by Blackmun, J., and Rehnquist, J.).

⁸⁵*Id.*

reasonableness clause; not to automatically force the new situation into the warrant clause category.⁸⁶

Thus, not only does the text of the Fourth Amendment support the non-seizure directed reasonableness standard, precedent existed for this analysis at the time *Davis* was decided.

Additionally, *Davis* caused some confusion—now dispelled by *Brigham City*—by stating that different levels of suspicion may apply in the community caretaking context than in the more specific emergency-aid situation that falls within it. That is, following the lead of the US Supreme Court in *Cady v Dombrowski*, 413 US 433, 93 S Ct 2523 (1973), *Davis* indicated that, to qualify as a community caretaking function, police activity must be totally divorced from any criminal investigation.⁸⁷ But the Supreme Court recently overruled this portion of *Cady* sub silentio when, in *Brigham City v Stuart*, the Court held that the subjective motivations of the police are irrelevant in this context.⁸⁸ Thus, whether *Davis* was correct to follow *Cady* then, there is no reason for this honorable court to do so now. In any case, it made no sense then, and makes no more now, to prohibit the police from making emergency entries to help injured persons when they were likely hurt through criminal conduct. Given that criminal agency is potentially behind every injury in these cases, the no-criminal-investigation exception would swallow the rule.

Implicitly recognizing this contradiction, the *Davis* court said that “[w]hile categorizing these different activities under the heading of ‘community caretaking functions’ may be useful in some respects, it does not follow that all searches resulting from such activities should be judged by the

⁸⁶*State v Slockbower*, 397 A2d 1050, 1060 (1979).

⁸⁷*Davis*, *supra*, at 21-22.

⁸⁸547 US 398, 404-05, 126 S Ct 1943, 1948.

same standard,” hinting that somehow some searches—such as those inventorying the contents of an impounded automobile—are to be judged by other than a reasonableness standard.⁸⁹ Thus, despite initially recognizing that non-seizure directed searches are valid as long as objectively reasonable, *Davis* unfortunately later undermined that proposition, leaving no clear rationale for distinguishing between community caretaking searches and emergency entries, nor providing a consistent theory of how to determine what standard of suspicion justifies a warrantless entry in either case. Ultimately, the entry in *Davis* was held unreasonable, because nothing substantiated the suspect “shots fired” report, and because the mere fact that the defendant delayed in opening the door did not by itself give rise to a reasonable belief that someone might be injured inside her motel room.⁹⁰

As indicated above, within months of the decision in *Davis*, the matter became further complicated when this court ruled in *In re Forfeiture of \$176,598* that officers were not functioning as community caretakers when they entered a house in the middle of the night that appeared to have been recently broken into, where it was unclear whether the residents were home.⁹¹ In that case, officers responding to a post-midnight security alarm found that (a) a light was on inside the house; (b) a window had been broken; (c) the security bars inside the window had been pushed away; (d) a lug wrench, a metal bar, and a skull cap were on the ground below the window; and (e) the alarm was still sounding.⁹² Nevertheless, this court found that the police entry could not be justified under

⁸⁹*Id.* at 25.

⁹⁰*Id.* at 28.

⁹¹443 Mich 261 (1993).

⁹²*Id.* at 272.

the community caretaking doctrine, including the emergency aid aspect thereof, because the police were at least partially interested in investigating a possible crime, and thus their search was not totally divorced from crime-detection motivations⁹³—again, a proposition now repudiated by *Brigham City*. Although *In re Forfeiture of \$176,598* did hold that the officers validly entered under the exigent circumstances exception to the warrant requirement, the opinion's community caretaking dicta again misperceived the emergency aid doctrine by ignoring its foundation in the reasonableness clause of the Fourth Amendment.

The initial clarity and foresight of *Davis* that non-seizure directed searches stand apart from the warrant requirement, and that they are valid if objectively reasonable, has been dimmed. This case presents an opportunity to re-establish that clarity, for not only the jurisprudence of this state, but as a step toward a proper understanding of non-seizure directed searches across the country. Non-seizure directed searches are governed solely by the reasonableness clause of the Fourth Amendment, and this court should so hold.

Even if the court declines to go this far, however, the clear weight of authority, including that of *Davis*, holds that the police may enter a private residence when they reasonably believe that someone may need emergency aid inside—wherever this doctrine may be located within the Fourth Amendment. This case meets that standard, as shown below, and so under any analysis the trial court's suppression ruling must be reversed.

⁹³*Id.* at 274.

- C. **Here, officers reasonably believed that either defendant or someone else inside the home might need emergency assistance, given evidence that defendant had crashed his truck into the fence around the property, had possibly broken into the house, was bleeding, was smashing items within the house, and was unresponsive to inquiries as to who he was and whether he or anyone else needed help.**

The non-seizure directed entry here was justified under the emergency aid doctrine. Brownstown police officers were dispatched to investigate a disturbance on or near Allen Road. While the police were en route, a named citizen said that a man was “going crazy” and directed them to the house in question. Arriving at the residence, the officers discovered a vehicle with a smashed front end near broken-down fence posts. Fresh blood was in and on the truck as well as on the door to the house. Three of the house windows were smashed, and there was someone inside—who, for all the police knew, may have been an intruder—screaming and breaking things. Although that individual may have had a cut hand, the amount of blood observed outside and the suspect’s refusal to respond when asked whether he or anyone else needed medical attention caused the officers to believe that someone else may have needed medical attention. Indeed, as Judge Talbot recognized in his dissent in the Court of Appeals, defendant’s own bizarre behavior provided a reasonable and articulable basis for the officers to conclude that defendant himself might have sustained internal injuries that needed medical care, or that he may have required psychiatric intervention to prevent him from incurring further injury.

Either way, defendant was inside the house breaking things, screaming, and refusing to communicate what was going on. If it wasn’t his residence, he was committing a home invasion and destroying someone else’s property. If it was his house, his erratic behavior suggested an injury more serious than a cut hand. Further, his refusal to say whether anyone else inside needed help gave rise to an inference that a passenger may have been injured in the crash, who defendant did not want

the police to discover. But even if the police had known that defendant was alone, the officers were still justified in believing that he may have needed assistance. Under these circumstances, the police not only had an objectively reasonable basis for believing that someone might need emergency assistance inside, they actually had probable cause to believe that defendant needed physical or mental help.

Correspondingly, knowing that someone was injured and seeing defendant's erratic behavior, the police would have been derelict in their duty *not* to have attempted to gain entry under these circumstances. As the New Jersey court observed in *State v Castro*, 570 A2d 40 (1990), there would be nothing more likely to chill diligent police efforts to preserve life than to require officers like Officer Goolsby to wait for a warrant before attempting to find out if defendant or someone else needed immediate aid.

In fact, if probable cause was both necessary and lacking, as Judge Jackson and the Court of Appeals seemed to hold, then the police here were left with no option but to leave the scene altogether, ignoring the possibility that defendant would die, destroy the house, or prevent an injured passenger from receiving aid. California's Supreme Court has noted that excluding the evidence in cases such as this "will not further the ends of the exclusionary rule in any appreciable way; for it is painfully apparent that the officer is acting as a reasonable officer would and should act in similar circumstances. Excluding the evidence can in no way affect his future conduct unless it is to make him less willing to do his duty."⁹⁴ Thus, in the event that this holding stands, "we might reasonably anticipate the assistance role of law enforcement in this society will go downhill. . . . In the future police will tell such concerned citizens, 'Sorry. We can't help you. We need a warrant and can't

⁹⁴*People v Ray, supra*, at 939 (internal ellipsis and quotation marks omitted).

get one.”⁹⁵ The Fourth Amendment in no way requires such an absurd result. Judge Jackson erred in holding otherwise.

Unfortunately, in the Court of Appeals below, instead of hewing to the emergency-aid doctrine established around the country and recognized by this court in *Davis*, the majority glossed over the above facts, ignored the relevant caselaw, and held that, because “the mere drops of blood did not signal a likely serious, life-threatening injury,” the police entry into the dwelling was not justified by the emergency-aid exception and therefore that it violated defendant’s Fourth Amendment rights. But, as clearly demonstrated above, a “likely serious, life-threatening injury” is not required under the emergency-aid exception. The relevant cases hold that all that is required is a reasonable belief that a person within *may be* in need of immediate aid. Not only did the per curiam opinion below fail to mention these cases, the majority did not cite a single authority holding that proof-positive of a serious, life-threatening injury is required before the police may make a warrantless emergency entry. In fact, none exists.

Defendant will no doubt try to justify the trial court’s ruling by responding that, because he told officers to “get a warrant,” he was communicating that he was the homeowner and that no emergency existed, and thus none did. Even assuming that “get a warrant” could be construed the way defendant suggests, it would not have the import he desires. Although the police must always take all of the presenting circumstances into account in determining whether an emergency entry is reasonably necessary—including statements made by civilians at the scene—they are certainly not required to blindly accept the assurances of a possible burglar, or of someone with a potential closed-head injury, or of someone who is obviously injured in at least some regard, that all is well.

⁹⁵*Id.* (internal ellipsis omitted).

In many of the cases detailed above,⁹⁶ someone at the scene attempted to assuage the officers' concern that a person inside the residence might be injured. In every single case, the police were justified in entering anyway. Like Mr. Corbine in *Bowker*, defendant here was hardly credible even if what he was saying was that the police were not needed. Recall that Corbine claimed he lived at the apartment he was outside of and had a working key, but a window was broken and he had a cut hand, his ID indicated a different address, and he could not initially remember the name of the girlfriend he said was currently inside the apartment.⁹⁷

Defendant here also may have sported a cut hand in a house with windows broken.⁹⁸ Additionally, someone had crashed a truck in the front yard and defendant was the most likely suspect since the blood trail led from the automobile to the house in which he was standing. And defendant would not respond when asked (a) who he was, (b) if he was okay, and (c) if anyone else inside needed help. Instead, he screamed and broke things. Thus, both Corbine and defendant lacked credibility, and the only *unreasonable* thing the police could have done in response in either case would have been to take their assurances at face value. As the Delaware Supreme Court said under similar circumstances, "the officers here reasonably disbelieved [the defendant's] statements because defendants' behaviors and their answers to questions did not make any sense."⁹⁹ So here.

⁹⁶*State v Bowker*, 754 NW2d 56 (SD, 2008); *US v Gambino-Zavala*, 539 F3d 1221 (2008); *US v Valencia*, 499 F3d 813 (CA8, 2007); *State v Bookheimer*, 656 SE2d 471 (W Va, 2007); *Guererri v State*, 922 A2d 403 (Del, 2007); *US v Najar*, 451 F3d 710 (CA10, 2006); *Moulton v State*, 148 P3d 38 (Wy, 2006).

⁹⁷*Bowker*, *supra*, at 60.

⁹⁸Officer Goolsby testified that he wasn't sure about the cut hand, several years having passed since the incident.

⁹⁹*Guererri*, *supra*, at 408 (internal quotation marks omitted).

Similarly, defendant will no doubt argue in this court as he did below that, because the police did not call for EMS or any other medical assistance, and because they did not immediately enter upon arrival, they did not truly believe that anyone needed emergency care. This assumption is not necessarily true, but even if it were, it would not matter. First, in none of the cases cited in this brief does it appear that the police summoned EMS before entering. Yet, in none of the cases did this fact affect the validity of the entry. Perhaps the police decided to see if there was a person actually injured and, if so, how severely, before summoning medical help. Perhaps officers believed that they could render such aid themselves if needed. Perhaps they intended to convey any injured person to a nearby medical facility instead of waiting for an ambulance. Whatever the case, it does not necessarily follow, as defendant would have it, that the lack of a call to medical personnel means there was no emergency.

Second, and for similar reasons, just because officers decide not to enter immediately upon arrival does not prove that they really do not believe there is an emergency. As the Tenth Circuit noted in *Najar*:

A delay caused by a reasonable investigation into the situation facing the officers does not obviate the existence of an emergency. . . . Here, the delay was due to the officers' repeated and increasingly vigorous attempts to make contact with the person they could see inside. To their credit, they did not simply batter down the door. We applaud their restraint and circumspection.¹⁰⁰

Similarly, in *US v Valencia*, the court rejected Valencia's claim that, because the officers did not enter his apartment until approximately 30 minutes after they had arrived, no emergency could have existed.¹⁰¹ The officers did not just stand around during that time, but instead made a reasonable

¹⁰⁰*Najar, supra*, at 719.

¹⁰¹*Valencia, supra*, at 816-17.

investigation of the report of shots fired. When they could not rule out the possibility that a shooter or a victim was still in the apartment, they justifiably entered.¹⁰²

Third, even if the lack of a call to medical personnel and the failure to immediately enter did demonstrate that the officers discounted the possibility of an emergency, that conclusion would be irrelevant. Again, as the Supreme Court pointed out in *Brigham City*, the subjective motivations of the police do not matter. If, under the circumstances, a reasonable inference exists that there might be an injured person inside a residence, the entry is justified even if the police do not subjectively believe it. Thus, again in *Valencia*, the court noted:

While the officers' actions might suggest that they did not subjectively possess an overwhelming suspicion that they would find any victims or immediate threats in the apartment, we evaluate the constitutionality of the search by looking only to whether they had an objectively reasonable basis for believing that exigent circumstances necessitated warrantless entry into the apartment. For the reasons stated above, the facts of this case presented the officers with just such an objectively reasonable basis for the search, regardless of their subjective expectations when they broke down the door."¹⁰³

This reasoning applies equally here. Regardless how much or how little Officer Goolsby and his partners actually believed that an emergency required that they enter, the objective circumstances provided a reasonable basis to believe that someone inside, including defendant, may have needed immediate care. That is all that is required. Judge Jackson and the Court of Appeals erred in ruling otherwise. Defendant's constitutional rights were not violated when the Brownstown police tried to determine if he or someone else needed their help. Defendant's assault with a dangerous weapon on Officer Goolsby should not have been suppressed. The trial court must be reversed.

¹⁰²*Id.*

¹⁰³*Id.* (internal quotation marks and citation omitted).

II.

Regardless whether a warrantless entry into a residence is justified, the occupants of the house may not assault the entering police, and if they do the evidence of the assault is admissible because it is not an exploitation of the illegal entry. As Officer Goolsby was attempting to enter defendant's house, defendant aimed a gun at him. Goolsby's testimony regarding defendant's assault is admissible.

Standard of Review:

As above, the trial court's application of the law is reviewed de novo.¹⁰⁴

Discussion:

Even if Officer Goolsby had violated defendant's constitutional rights by entering without a warrant, that did not give defendant the right to assault him, and so the criminal act viewed by and perpetrated against Goolsby was still erroneously suppressed. Simply put, when a defendant commits an independent crime in reaction to an illegal entry, the evidence of that crime is not fruit of the poisonous tree, and must be admitted. That is, only that evidence which comes from exploiting the illegal search may be suppressed. In the case of independent crimes, the police cannot be said to have "exploited" the illegality of the entry, especially when the independent crime is an assault on an officer. And, any other rule would give residents the green light to execute officers who violate residents' Fourth Amendment rights. This simply cannot be and, as most courts that have considered this issue have found, is not the state of the law.

The Idaho Court of Appeals considered just such a case in May of this year, and determined that, even if the police officers had illegally entered the defendant's home, they did not exploit this

¹⁰⁴*People v Attebury*, 463 Mich 662, 668 (2001).

illegality when they saw the defendant shooting at them.¹⁰⁵ Looking to cases from the Fourth and Eleventh US Circuit Courts of Appeals, and decisions of the state courts of Colorado, Florida, Maine, Massachusetts, Minnesota, Montana, Oregon, South Dakota, and Washington,¹⁰⁶ the court wrote in *State v. Deisz* that “when a person physically attacks police officers or other government agents in response to an unlawful search or seizure, the exclusionary rule does not require suppression of evidence of the attack.”¹⁰⁷ To the contrary, although the entry was a but-for cause of the shooting, and although the shooting was nearly simultaneous with the entry, the defendant’s independent actions broke the causal connection.¹⁰⁸ Even if the defendant’s actions were reasonable and could support a meritorious self-defense claim, the exclusionary rule would not require that the evidence of the assault be suppressed.¹⁰⁹ Thus, even if the officers’ entry was illegal and precipitated

¹⁰⁵*State v. Deisz*, 186 P2d 682, 687 (Idaho, 2008).

¹⁰⁶See *US v Sprinkle*, 106 F3d 613, 619 (CA 4, 1997); *US v Bailey*, 691 F2d 1009, 1017 (CA 11, 1983); *People v Doke*, 171 P3d 237, 239 (Colo, 2007); *State v White*, 642 So2d 842, 844 (Fla Dist Ct App, 1994); *State v Boilard*, 488 A2d 1380, 1386 (Maine, 1985); *Commonwealth v Saia*, 360 NE2d 329, 332 (Mass, 1977); *State v Bale*, 267 NW2d 730, 732 (Minn, 1978); *State v Ottwell*, 779 P2d 500, 502 (Mont, 1989); *State v Burger*, 639 P2d 706, 708 (Oregon, 1982); *State v Miskimins*, 435 NW2d 217, 221 (SD, 1989); *State v Aydelotte*, 665 P2d 443, 447 (Wash Ct App, 1983). Other circuits have likewise held that the fruit of the poisonous tree doctrine does not apply to new crimes committed by an individual who is the victim of a Fourth Amendment violation. See, e.g., *US v Pryor*, 32 F3d 1192, 1195-96 (CA 7, 1994) (giving false social security number to police officers); *US v Smith*, 7 F3d 1164, 1167 (CA 5, 1993) (threatening the President); *US v Mitchell*, 812 F2d 1250, 1253 (CA 9, 1987) (same); *US v Garcia-Jordan*, 860 F2d 159, 161 (CA 5, 1988) (making false statements to border patrol officials); *US v King*, 724 F2d 253, 256 (CA 1, 1984) (shooting at police officers); *US v Bailey*, 691 F2d 1009, 1017 (CA 11, 1982) (fleeing from police and resisting arrest).

¹⁰⁷*Deisz*, *supra.*, at 686.

¹⁰⁸*Id.* at 686-87.

¹⁰⁹*Id.* at 687 n3.

the defendant's attack, their testimony that the defendant shot at them was admissible.¹¹⁰ Any other result "would effectively give the victim of police misconduct carte blanche to respond with any means, however violent."¹¹¹

As Professor LaFave has pointed out, this analysis applies not only to assaults on the police, but to instances in which a defendant (a) flees from an entering officer, (b) attempts to bribe the police, (c) threatens the officer with harm should he testify against the defendant, or (d) makes some criminal misrepresentation in an effort to bring the incident to a close.¹¹² In all these cases, even if the entry was improper, it makes no sense to consider the defendant's actions to be exploitations of the illegal entry. That is, the police enter to stop or investigate crime—they are not attempting to goad the defendant into committing a new offense altogether. When they do illegally enter and find evidence of the crime they are investigating, those fruits are generally suppressed. But when they observe a new crime being committed, according to Professor LaFave, "the critical fact is that there has been no exploitation of the prior illegality" and so the evidence is admissible.¹¹³

There are two court of appeals opinions on this issue in Michigan, and they seem to fall on opposite sides. In *People v Daniels*, 186 Mich App 77 (1990), the Court of Appeals noted that the exclusionary rule does not bar the introduction of evidence of independent crimes directed at police

¹¹⁰*Id.* at 687.

¹¹¹*Id.* (citation and internal quotation marks omitted).

¹¹²6 Wayne R. LaFave, *Search & Seizure: A Treatise on the Fourth Amendment* 377 § 11.4 (and cases cited therein).

¹¹³*Id.*

officers as a reaction to an illegal search.¹¹⁴ Thus, in *Daniels*, evidence that the defendant had aimed a long gun at an officer was admissible to prove felonious assault and felony firearm even if the officers had illegally seized him before he turned on them. The *Daniels* court's reasoning followed the cases cited above, when it observed: "Any other conclusion would effectively give a person who has been the victim of an illegal seizure the right to employ whatever means available, no matter how violent, to elude capture."¹¹⁵

People v. Dillard, 115 Mich App 640 (1982), on the other hand, reached what the Court of Appeals majority in this case found to be the opposite result. That is, like defendant here, Dillard greeted the officers entering his home by pointing a long gun at them, and the court held that he could not be convicted of felonious assault because the officers' entry was illegal. But Dillard's case got to the Court of Appeals not after a ruling on a motion to suppress, but after he had been convicted of felonious assault. On direct appeal, he claimed his conviction must be reversed because he had a right to reasonably resist an illegal arrest. The *Dillard* court agreed, finding both that the entry was illegal and that the defendant's resistance was reasonable under the circumstances. Thus, the conviction could not stand.¹¹⁶

Defendant's case differs from *Dillard* in at least two important respects. First, a suspect no longer has the right to resist an unlawful arrest in Michigan. In 2002, the Legislature did away with

¹¹⁴*Id.* at 82.

¹¹⁵*Id.*

¹¹⁶*Dillard, supra*, at 641-42.

that rule,¹¹⁷ following the consensus of many other jurisdictions that “the right to resist an illegal arrest is an outmoded and dangerous doctrine.”¹¹⁸ Thus, in October 2003, when defendant assaulted Officer Goolsby by pointing a long gun at him, defendant did not have the right to resist arrest, even if it were illegal. *Dillard* relied exclusively on that right and, as such, that case has been overruled by statute. The reliance of the Court of Appeals on *Dillard* was misplaced.

Second, *Dillard* in no way stands for the proposition that the evidence of an assault on an officer who is illegally present must be suppressed as fruit of the poisonous tree. The court was never presented with that argument because *Dillard* apparently did not seek to exclude the officer’s testimony. Instead, he asserted that he was immune from prosecution altogether. While it is true that the Court of Appeals agreed with this argument, *Dillard* does not have any bearing on the Fourth Amendment issue at stake here and so is inapposite.¹¹⁹

Additionally, even if this court were to consider *Dillard* insofar as it holds that a defendant cannot be convicted of assault for reasonably resisting an illegal entry, *Dillard* was wrongly decided, for the reason stated in Judge Knoblock’s dissent. It is seldom, if ever, appropriate for a court to find, as a matter of law, that a defendant’s actions are reasonable, such that no prosecution can be had.¹²⁰ To the contrary, reasonableness is a matter of fact for a jury to determine.¹²¹ This is

¹¹⁷M.C.L. 750.81d.

¹¹⁸*People v Ventura*, 262 Mich App 370, 376 (2004) (quotation marks and citation omitted).

¹¹⁹*Dillard, supra*, at 642-43.

¹²⁰*Id.* at 645-46 (Knoblock, J., dissenting).

¹²¹See *People v Hartwick*, 8 Mich App 193, 194-96 (1967).

especially the case because, in this context, the facts must be viewed in the light most favorable to the prosecution.¹²² Further, the prosecution is not required to negate every theory of innocence to survive a motion for a directed verdict.¹²³ In short, where there is any evidence to support the inference that a defendant's actions in supposed self-defense were not reasonable, he is not entitled to have assault charges dismissed.

Here, defendant's actions were in no way reasonable, and certainly not as a matter of law. There is absolutely no evidence that Goolsby had his weapon drawn, that he said anything threatening, or that he posed of any kind of physical harm to defendant. Defendant has never even claimed that he acted in self-defense. To the contrary, as the dissent noted in *Dillard*, "defendant was aware that the intruders were police officers and that the only danger he perceived was temporary detention and loss of liberty."¹²⁴ Even in the unlikely event that defendant could accurately determine whether this perceived danger to his liberty was constitutionally impermissible, that is not the kind of threat that justifies the use of force in self-defense. It would be anomalous indeed were this court to hold that a resident may threaten an entering officer with a firearm if it turns out that the officers' entry was improper. Unless the exclusionary rule operates to give homeowners a license to assault police officers in the performance of their duties, evidence of defendant's actions toward Goolsby must be admitted in this case regardless whether the latter's entry was justified. Again, Judge Jackson and the Court of Appeals erred in holding otherwise, and must be reversed.

¹²²See *People v Hampton*, 407 Mich 354, 368 (1979).

¹²³See *People v Edgar*, 75 Mich App 467, 474 (1977).

¹²⁴*Dillard, supra*, at 646 (Knoblock, J., dissenting).

RELIEF

Therefore, the People request that this honorable court reverse the Court of Appeals, rule that the evidence of defendant's assault on Officer Goolsby is admissible, and remand this matter for trial.

Respectfully submitted,

KYM WORTHY
Prosecuting Attorney
County of Wayne

TIMOTHY A. BAUGHMAN
Chief of Research, Training,
and Appeals

/s/

DAVID A. McCREEDY (P56540)
Assistant Prosecuting Attorney
1441 St. Antoine, 11th Floor
Detroit, Michigan 48226
(313) 224-3836

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