

STATE OF MICHIGAN  
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN, Supreme Court No. 150906  
Plaintiff-Appellee, Court of Appeals No. 314337  
v St. Joseph Circuit Court No. 12-  
MICHAEL RADANDT, 017690-FH  
Defendant-Appellant.

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**BRIEF ON APPEAL OF APPELLEE  
PEOPLE OF THE STATE OF MICHIGAN**

**ORAL ARGUMENT REQUESTED**

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**STATEMENT OF JURISDICTION**

Plaintiff-Appellee State of Michigan agrees that this Court has jurisdiction to hear the instant appeal.

## STATEMENT OF QUESTIONS PRESENTED

1. In *Florida v Jardines*, 133 S Ct 1409 (2013), the United States Supreme Court held that police officers conducting a “knock and talk” are limited to actions that a reasonable visitor could be expected to take in attempting to make contact with the residents. Here, seeing numerous signs that someone was home, the officers followed a heavily trafficked path to Radandt’s rear door, which they believed was a customary entrance, for the purpose of making contact with the residents. The trial court found them honest and credible and their actions reasonable. Did the officers exceed the scope of a proper knock and talk in approaching Radandt’s back door?

Appellant’s answer: Yes.

Appellee’s answer: No.

Trial court’s answer: No.

Court of Appeals’ answer: No.

2. To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system of disregarding probative evidence. Here, the police officers acted non-culpably, reasonably relied on existing appellate precedent, and also reasonably relied on a search warrant issued by a neutral and detached magistrate. Even if the officers exceeded the scope of a permissible knock and talk, does the good-faith exception to the exclusionary rule apply?

Appellant’s answer: No.

Appellee’s answer: Yes.

Trial court’s answer: Did not address.

Court of Appeals’ answer: Did not address.

## CONSTITUTIONAL PROVISIONS INVOLVED

### **Fourth Amendment to the U.S. Constitution**

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.

### **Section 11, of article 1 of Michigan's 1963 Constitution**

The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation. The provisions of this section shall not be construed to bar from evidence in any criminal proceeding any narcotic drug, firearm, bomb, explosive or any other dangerous weapon, seized by a peace officer outside the curtilage of any dwelling house in this state.

## INTRODUCTION

Imagine you are a UPS delivery person. Compare Def's App for Leave to Appeal, at 7. You need a signature for your package. As you pull up to the delivery house, you see that someone is home, and maybe in the middle of a project. Two cars occupy the drive, a light is on in the barn in back and to the side of the house, power tools lie in the grass near the barn's open door, and a dog is running loose.

You are not sure which door is the main entrance. The "front" door looks unused because it leads to an enclosed porch. The driveway leads to a side door; and a well-trafficked path leads to a rear corner door, visible from the driveway and closest to the barn. You try the side door first, but no answer. You peek in the door window, but no one is coming. You wonder if you should be at the other door; that looks to be where people go, and besides, maybe someone is back there, by the tools.

You follow the path to the rear door. As you knock, you smell something suspicious and hear voices and laughter inside. A power vent expels air from the inside. You knock a couple more times, hoping to get their attention, but they are apparently preoccupied. They will just have to get their package another day.

A few weeks later, a process server shows up at your work. You are being sued for trespassing. "Trespassing?" you think. "When did I trespass?" Confused and a little embarrassed, you go to your in-house counsel. "What happened, Bob?" she asks. "I'm really not sure," you say.

Michael Radandt asks this Court to find actions just like the UPS man's illegal. More specifically, he asks this Court to hold that police deputies Michael McCoy and Jeremiah Abnet unlawfully entered Radandt's curtilage when they

followed a heavily trafficked path to his rear corner door, visible from the driveway and not fenced in, to conduct a “knock and talk,” believing it was a door visitors would use and amidst numerous signs that someone was home. Radandt asks this Court for that holding despite his own admission that the rear door was indeed used as an entrance to the house, and despite the trial court’s numerous factual findings against his position: among them, that Deputies McCoy and Abnet were honest and credible; that they went to Radandt’s house for the purpose of conducting a knock and talk; that the knock and talk was not a subterfuge to conduct an illegal search; and that the circumstances made approaching the back door reasonable.

Radandt misunderstands the law. The U.S. Supreme Court’s decision in *Florida v Jardines* restricts knock and talks to actions a reasonable visitor could be expected to take, and that is exactly what the officers did here.

Even if this Court were to reject the trial court’s well-supported factual and credibility findings and adopt Radandt’s rigid gloss on *Jardines*, the officers here conducted the knock and talk in reasonable good faith, and thus the exclusionary rule should not apply. Their actions fully comported with then-existing case law, were not reckless or otherwise culpable, and had the approval of a neutral and detached magistrate. A ruling for Radandt would conflict with *Jardines*, *Carman*, *Herring*, *Davis*, and *Leon*, and with Michigan’s policy of applying the exclusionary rule no more than necessary to effectuate its purpose. Both lower courts correctly denied Radandt’s motion to suppress, and this Court should affirm.

## STATEMENT OF FACTS

Michael Radandt entered a conditional guilty plea in November 2012 to one count of manufacturing between 20 and 200 marijuana plants, MCL 333.7401(2)(d)(ii). App 194a. His conviction was based on evidence obtained during execution of a search warrant following Deputies Michael McCoy's and Jeremiah Abnet's visit to his property on December 12, 2011, to conduct a knock and talk. As of the visit, Deputy McCoy had been a police officer for approximately 16 years, and Deputy Abnet for approximately 10 years. App at 52a, 146a. The deputies conducted two knock and talks at Radandt's property that year: one in the summer of 2011, and one in the winter of 2011, each following a tip of potential drug activity. Only their actions during the latter, winter visit are at issue in this case.

### **The Summer Visit**

In August 2011, the police department received a tip of possible drug activity occurring at Radandt's house. App at 54a, 138a. Deputies McCoy and Abnet went to the house to conduct a "knock and talk," parking in the gravel driveway that led up to the side of the house. App at 54a, 60a–62a, 90a, 140a. Upon arrival, the house appeared to be vacant, "almost," with a still-smoldering burn pit to the rear/side of the house, which suggested that someone may be home or on the property. *Id.* at 54a, 60a-61a; 96a-98a, 142a. The officers each testified that the pit was visible from the driveway, *id.* at 97a-98a, 114a, 140a, though Deputy Abnet later offered conflicting testimony on this point, see *id.* at 160a.

The officers knocked on all four doors and looked in windows, *id.* at 79a, 98a–101a, hoping to find someone to contact. *Id.* at 60a–61a, 97a–98a. The upstairs windows were covered with black Visqueen, and the officers noticed several holes in the ground where it appeared that plants had been pulled. *Id.* at 54a, 79a. It is unclear from what vantage point the officers first noticed the holes; testimony from Deputy McCoy suggests that they saw the holes from walking on the driveway. *Id.* at 79a. Upon receiving permission from the neighbors, the officers additionally walked on trails behind the property. *Id.* at 60a, 81a.

Not having made contact with any residents and without probable cause, the officers left and did not think about the property again until a few months later, in December of that year. *Id.* at 61a, 80a–82a, 91a–92a.

### **The Winter Visit**

In December 2011, Deputies McCoy and Abnet returned to the property after receiving another tip of possible drug activity. App at 61a. As on the first visit, their purpose was to conduct a knock and talk “to make contact with the individuals, again to either verify or disqualify the . . . tip.” *Id.* at 61a, 68a, 77a–78a. As Detective Abnet described, the purpose of a knock and talk is to

Just gather information. Just knock on doors. See who lives there. Talk to them. Tell them the tip we got. See if they give us permission to search. [*Id.* at 161a.]

While defense counsel repeatedly invited Deputies McCoy and Abnet to characterize their visit as an “investigation,” with some success, the officers testified clearly that their purpose in approaching the property was to make contact

with the residents, and that a knock and talk is an investigative tool. *Id.* at 61a, 68a, 77a–78a, 88a, 157a, 161a, 163a–164a.

Immediately upon arriving in December 2011, it appeared to the officers that someone was home: two vehicles rested in the driveway; the barn door stood open, and a light was on in the barn; power tools were laid out in the barn and on the grass; and a Rottweiler was running loose on the property. *Id.* at 61a–62a, 68a–69a, 100a, 116a, 141a–142a, 161a, 165a–166a.

The officers began by knocking on the side door that abutted the driveway. *Id.* at 64a–65a, 84a. Between that and the “front” door, the side door “appeared to be the entrance most commonly used.” *Id.* at 65a. The “front” door, in contrast, led only to an enclosed porch and did not appear to be a common entrance. *Id.* at 64a–65a, 152a–153a; see also App at 38a–44a (pictures). Deputy Abnet recalled looking through the glass on the side door to see if anyone was coming, *id.* at 151a, 168a–169a, but the officers did not receive an answer.

As on the summer visit, the officers again saw a well-worn path of heavy foot traffic, where the grass had been beaten down, leading around the northeast corner of the house to a rear sliding-glass door. *Id.* at 65a–66a, 98a–99a, 100a–101a, 145a. Cf. *id.* at 67a, 167a–168a (no snow on ground). The rear door was approximately 20 feet from the side door that abutted the driveway, and only about one foot around the corner of the house—“immediately on the northeast corner of the residence.” *Id.* at 65a, 145a–146a.

The rear door was visible from the driveway, which extended behind the house to the barn, though the officers themselves did not first see the door from the driveway. *Id.* at 65a, 90a. Based on the heavily trafficked path leading back to it, the officers thought the rear door may be “the primary door.” *Id.* at 87a. Deputy Abnet testified that there appeared to be two “main entrance[s]” to the house: the side door abutting the driveway, and the rear door. *Id.* at 145a.

The officers went to the rear door and knocked, again attempting to make contact with someone from the house. *Id.* at 161a. While Deputy McCoy fully agreed with defense counsel that he would be obligated to leave if it seemed the residents did not want to answer the door or talk to him, *id.* at 89a, the officers believed based on their observations that someone was home, or in the pole barn 30 feet from the rear door, *id.* at 93a, and perhaps not hearing their knocks. *Id.* at 68a–69a, 88a–89a, 142a, 161a, 165a–166a.

As they rounded the northeast corner to the rear door, they heard music, talking, and laughing inside the house. *Id.* at 68a, 145a, 156a. They also noticed, from the vantage point of the rear door, blacked-out windows and a power vent blowing air to the outside of the house, and Deputy McCoy for the first time smelled marijuana as he was knocking on the door. *Id.* at 69a–70a, 101a–102a, 116a, 125a, 143a–144a. (Deputy Abnet did not smell marijuana because he has lost his sense of smell, potentially due to having been in hundreds of meth labs. *Id.* at 143a.)

After again receiving no answer, *id.* at 72a, 100a, the officers walked to the other side of the house and “still didn’t get any . . . response[.]” *Id.* at 71a. At that

point they decided to leave and get a search warrant. *Id.* They agreed that until they got to the rear door, there was no probable cause to believe that a crime was being committed. 158a–159a.

### **The Magistrate-Issued Search Warrant**

The same day, Deputy McCoy prepared an affidavit to request a search warrant. In it, he clearly notified the magistrate that he had viewed all sides of the house, describing the property as having “doors on the south, north, east and west sides” and “three outbuildings all red in color.” App at 1b. The affidavit disclosed that the officers had first gone to the property in the summer of 2011, to make contact with the residents. *Id.* Deputy McCoy notified the magistrate that they had gone behind the house: he disclosed that as they “were attempting contact with the subjects,” they “noticed several locations *behind the residence* that appeared to have had large plants pulled from the ground,” consistent with marijuana plant holes. *Id.* (emphasis added).

Turning to the December 2011 visit, the officers disclosed that they had returned to the property after receiving more tips, including that “there were vehicles coming and going from the residence at all hours.” *Id.* The officers went to the house “to attempt contact” with the residents. *Id.* at 2b. This time, “there were two vehicles in the driveway but Officers could not get an answer at the door.” *Id.* Deputy McCoy noted that “there was a Rottweiler running loose on the outside of the residence, the barn door was open, a stereo was on inside of the residence on the second floor[,] and Officers could also hear male voices coming from the second

floor.” *Id.* Deputy McCoy again notified the magistrate that they had observed the property from multiple angles, explaining that “the second story windows [were] still covered in black plastic, the windows on the south side of the second story were partially open, [and] there was a makeshift power vent in the window on the east side of the second story,” consistent with a “Grow Op[erations].” *Id.* Deputy McCoy noted that he “could smell an odor of fresh marijuana” in the growing process. *Id.*

Later that afternoon, Magistrate Mark Books issued the search warrant. App at 3b. Upon executing it, the officers found extensive evidence of a marijuana grow operation. Radandt was charged with delivery and manufacture of marijuana, felony firearms, and maintaining a drug house. App at 1a.

### **The Denial of Radandt’s Motion to Suppress**

Radandt moved to suppress the evidence found as a result of the executed search warrant, arguing that the police had exceeded ordinary citizen contact and unlawfully entered his curtilage, developing probable cause only from an unlawful vantage point. App at 11a, 26a.

The trial court held an evidentiary hearing on August 13, 2012, at which Deputies McCoy and Abnet testified. App at 45a. Radandt did not testify and offered no defense witnesses. App at 48a.<sup>1</sup> But while the parties had already briefed the issue, the court declined their invitation to rule on Radandt’s motion, instead directing additional briefing based on the testimony. The trial judge explained that he wanted additional time to think and read the relevant cases “in

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<sup>1</sup> Though Page 48a is labeled as “45a,” it immediately precedes page 49a.

full.” App at 176a–177a. The court also made clear that it did not believe a knock and talk entitled the police to go to just *any* door:

[Defense counsel]: Did they have the right to go to the back door and knock?

[Prosecutor]: They have the right to go to any door and knock.

The Court: No, they don’t. I don’t think they do. I don’t think they have the right to go anywhere they want on a property to knock on a door. You got to have some reason why you went in the back door. Now, did they have that in this case? They may have. But I want to – I want to read the cases. [App at 176a.]

After additional briefing, the parties returned to argue the suppression motion on October 25, 2012. While defense counsel for Radandt’s co-defendant<sup>2</sup> at the suppression hearing acknowledged that Deputies McCoy and Abnet had been “forthright” and “didn’t try to sugar coat” their testimony, App at 17b, counsel for both defendants nevertheless argued that the knock and talk was “a masquerade to try to cover up the illegal conduct of the officers in going to the back of the home.” *Id.* at 26b; App at 21a–22a.

The prosecutor responded that “an ordinary citizen would feel[] they have the right to knock on a door to see if somebody was home, or to follow the path going to another door that appeared to be commonly and heavily used.” App at 38b. Alternatively, the prosecutor argued that the good-faith exception to the exclusionary rule should apply, given that the officers laid out their steps in their

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<sup>2</sup> While the court did not join Radandt’s case with that of the other occupant of his home at the time of the search, Mason Fuller, both defendants held a joint evidentiary hearing on their suppression motions. App at 49a–51a.

affidavit to the magistrate, “the Court was apprised of the measures taken by the officers,” and “all the property was seized pursuant to a Court Order.” *Id.* at 40b.

The trial court denied Radandt’s motion to suppress, finding that the officers were credible, *id.* at 52b–55b, that their purpose was to contact someone from the house, *id.* at 27b–28b, 52b–55b, that their knock and talk was not a “subterfuge” for an illegal search, and that they had reason to believe someone was home:

It wasn’t a subterfuge. . . . They went there to try and gain entry to talk to somebody to get permission to look around based upon the complaints they had. They did it in the middle of the day. They did it . . . [where] they found reasonable reason to believe that there were people there. And they also heard noises inside the home causing them to believe that people were there. And so they went along a path that went to another door. And there they smelled the odor of marijuana, and saw the fan, and got a search warrant. [*Id.* at 52–53b.]

The court emphasized that the officers did not abuse the knock-and-talk tactic:

I don’t think that it was subterfuge. The officers indicated they went there for a knock and talk. A knock and talk, by their own statements, is an investigative tool based upon suspicions. . . . It has certain limitations. I don’t find that the officer abused it. [*Id.* at 53b–54b.]

And the court found they were reasonable in approaching the rear door:

I don’t find any objection to what they did here by going to the back and then seeking a search warrant upon what they smelled. . . . I find that there was no reason for them not to go into the backyard when they believed it was a path to another door the people used to enter the building to try and gain access to talk to somebody. [*Id.* at 54b–55b.]

Because the court held that Deputies McCoy’s and Abnet’s actions were reasonable and did not violate the Fourth Amendment, it declined to address whether Radandt had standing as a resident of the house to challenge the officers’ actions, and declined to address whether the good-faith exception to the exclusionary rule applied. *Id.* at 55b.

### **The Court of Appeals's Affirmance**

Upon an order from this Court to hear Radandt's appeal, App at 193a, the Court of Appeals affirmed and held that the officers did not unlawfully expand the knock and talk. *Id.* at 194a. It noted that the trial court's "several factual findings" were "well supported" and that the decision to move to the rear of the home was reasonable in light of signs that someone was in or around the home. *Id.* at 195a–197a. Because "an observable path" led from the main entry to the rear door and defendants took no steps to protect it from the public, the court held that the backyard was not curtilage; regardless, a technical trespass did not transform the knock and talk into an unreasonable search where police reasonably believed they may encounter the person being sought. *Id.* at 197a. Because it found no Fourth Amendment violation, the court did not address application of the exclusionary rule.

Radandt now appeals.

### **STANDARD OF REVIEW**

This Court reviews a trial court's findings of fact at a suppression hearing for clear error, and reviews de novo the application of constitutional standards to the facts. *People v Williams*, 472 Mich 308, 313 (2005); MCR 2.613(C). Clear error exists if the reviewing court is left with a definite and firm conviction that the trial court made a mistake. *People v Farrow*, 461 Mich 202, 209 (1999). This Court gives deference to the trial court's resolution of factual issues, particularly where witness credibility is involved, and may not substitute its judgment for that of the trial court and make independent findings. MCR 2.613(C); *Farrow*, 461 Mich at 209.

## ARGUMENT

### **I. The knock and talk here was reasonable and comported with the requirements of the Fourth Amendment.**

By following a heavily trafficked path to Radandt's rear door that they reasonably believed to be a customary entrance, for the purpose of making contact with the occupants, Deputies McCoy and Abnet behaved as reasonable visitors would. They accordingly did not exceed the scope of a proper knock and talk.

#### **A. The Fourth Amendment inquiry focuses on whether the police took an action a reasonable visitor could be expected to take.**

Both the United States and Michigan Constitutions guarantee the right against unreasonable searches and seizures, which extends to the curtilage around a home. *People v Champion*, 452 Mich 92, 97 (1996); *Oliver v United States*, 466 US 170, 180 (1984); US Const, Am IV, XIV; Const 1963, art 1, § 11. Generally, a search or seizure of a home or its curtilage conducted without a warrant is per se unreasonable unless it falls within an exception to the warrant requirement. *Champion*, 452 Mich at 98. The burden is on the government to show that an exception applies. *Hardesty v Hamburg Twp*, 461 F3d 646, 655 (CA 6, 2006). Absent a compelling reason to impose a different interpretation, this Court construes the Michigan Constitution to provide the same protection as the federal Fourth Amendment. *People v Levine*, 461 Mich 172, 178 (1999).

One exception to the warrant requirement is the “knock and talk.” *Schneckloth v Bustamonte*, 412 US 218, 219 (1973). The knock and talk is not a search or seizure at all, but rather a long-recognized investigative technique to gain

a person's voluntary consent to questioning or a search. *United States v Thomas*, 430 F3d 274, 277 (CA 6, 2005). The U.S. Supreme Court has long held that consensual encounters between police and suspects or witnesses are excluded from the Fourth Amendment's prohibitions, explaining that "even when officers have no basis for suspecting a particular individual," they may question that individual and request to search his property "as long as the police do not convey a message that compliance with their requests is required." *Florida v Bostick*, 501 US 429, 434–435 (1991). This legitimate police tool furthers the public's interest in information-gathering, while respecting the property interests, reasonable expectations of privacy, and freedom of movement that the Fourth Amendment protects.

The Supreme Court recently elaborated on the boundaries of the knock and talk in *Florida v Jardines*, 133 S Ct 1409 (2013). In *Jardines*, police dispatched a joint surveillance team to Jardines's house after receiving a tip that he was growing marijuana there. *Id.* at 1413. After watching the home for fifteen minutes, two detectives approached the front porch with a trained drug-sniffing dog. *Id.* As they approached, the dog explored the area and detected drug odors at the base of the front door. At that point, the detectives left and obtained a search warrant. *Id.* At no point did they knock on Jardines's door or make any attempt to contact him.

The Supreme Court held that a search had occurred, explaining that the detectives had exceeded the scope of the implied license for visitors to enter Jardines's curtilage. *Id.* at 1415. The Court applied traditional property principles and explained that the police may not enter the curtilage "to engage in conduct not

explicitly or implicitly permitted by the homeowner.” *Id.* at 1414. Because Jardines’s front porch was a constitutionally protected area, the Court asked whether the detectives had entered it through an unlicensed physical intrusion, which required the Court to consider the scope of the implied license for visitors to enter Jardines’s curtilage. *Id.* at 1415.

The Court held that the scope of the license is “implied from the habits of the country[.]” *Id.* As one example, the Court noted that “the knocker on the front door is treated as an invitation or license to attempt an entry,” and explained that the implied license “typically” permits visitors to “approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave.” *Id.* But the Court did not limit the scope of the implied license to that one prototypical scenario. Instead, the Court agreed with the dissent that determining the scope of the implied license in a given situation would involve an inquiry into “the appearance of things,” what would be typical for a visitor, what might cause alarm to the resident, and what would be expected from a reasonably respectful citizen. *Id.* at 1415 n 2. Indeed, the question is what would be “customary, usual, reasonable, respectful, ordinary, typical, [and] nonalarming.” *Id.* Because there is no traditional license to bring a trained drug dog onto someone’s property to do nothing but conduct a search, the Court held, the officers’ actions in *Jardines* were improper. *Id.* at 1416.

The following year, the Court confirmed in *Carroll v Carman*, 135 S Ct 348 (2014), that *Jardines* imposed no bright-line test. In *Carman*, two police officers

visited Carman's home to investigate a tip. *Id.* at 349. The house sat on a corner lot; the front faced a main street and the left faced a side street. *Id.* The officers initially drove to the front of the house, but turned up the side street to find parking among several cars in a gravel parking area on the left/rear side of the property. *Id.*

As they exited their cars, the officers saw a small carport or shed with its door open and a light on. *Id.* They looked to see if anyone was inside, then continued walking toward the house, when they saw a rear sliding glass door that opened onto a ground-level deck. *Id.* Because they thought the rear door looked like a customary entryway, they knocked on it. *Id.*

The Carmans were not pleased and subsequently sued one of the officers for unlawfully entering their property by going onto their back deck without a warrant. *Id.* Citing *Jardines* and circuit precedent, the Third Circuit held that the officer had violated the Fourth Amendment by going to Carman's back door without first trying his front door. *Carman v Carroll*, 749 F3d 192, 199 (CA 3, 2014). The court of appeals also held that the officer was not entitled to qualified immunity. *Id.*

The Supreme Court peremptorily reversed. *Carman*, 135 S Ct at 352. While it declined to decide "whether a police officer may conduct a 'knock and talk' at any entrance that is open to visitors rather than only the front door," it held that the officer was entitled to qualified immunity because the knock and talk did not violate any law that was clearly established. *Id.*

As confirmed in *Jardines* and *Carman*, the constitutionality of a given knock and talk is context-dependent and determined by the facts of each case. *Williams*,

472 Mich at 314–17; *People v Frohriep*, 247 Mich App 692, 698–699 (2001). The Fourth Amendment “does not impose a ‘one size fits all’ rule of police investigation”; instead, the ultimate touchstone is reasonableness, determined by the totality of the circumstances facing the officer. *Williams*, 472 Mich at 316–317; *Kentucky v King*, 131 S Ct 1849, 1856 (2011); *Samson v California*, 547 US 843, 848 (2006). That makes sense because police often must make quick decisions in a variety of unique and unexpected circumstances. The U.S. Supreme Court has thus emphasized the flexibility of the Fourth Amendment and has refused to reduce the reasonableness standard to rigid, mechanical rules or “Procrustean application.” *Ker v State of Cal*, 374 US 23, 33 (1963); *United States v Drayton*, 536 US 194, 201 (2002).

**B. Deputies McCoy and Abnet behaved as reasonable visitors in approaching Radandt’s rear door; thus, their knock and talk was lawful.**

Deputies McCoy and Abnet behaved as reasonable visitors would: in their attempt to contact the house’s occupants, they followed a heavily trafficked path that led to the back door, located just around the corner, reasonably believing it was a customary entrance. Thus, they did not exceed the scope of a proper knock and talk. *Jardines*, 133 S Ct at 1415 & n 2.

As an initial matter, the trial court made several factual findings of relevance here, after an evidentiary hearing and multiple rounds of briefing. In particular, the court found Deputies McCoy and Abnet honest and credible, that their purpose in approaching Radandt’s rear door was to make contact with someone from the house—not to use the “knock and talk” as a “subterfuge” for a warrantless search—

and that it was reasonable to believe that someone was home. App at 27b–28b; 52b–55b. Moreover, the court found that the “front” door was not a common entrance, see *id.* at 54b— a conclusion with which counsel for Radandt’s suppression-hearing co-defendant appeared to agree. See *id.* at 44b.

Having considered the layout of Radandt’s property and the credibility of the witnesses, the court also implicitly found that a visitor could reasonably be expected to approach Radandt’s rear door. In distinguishing *Galloway*, the court noted that it is “not objectionable for an officer to come upon that part of the property which has been open to public common use” and that “[a] route which any visitor to a residence would use is not private[.]” *Id.* at 51b–52b. The court continued: “[I]n . . . *Galloway* . . . , the officers did not follow a path that went to the back of the home that was open to the public. Here, the officers testified that . . . they walked a path to the back that they saw in the grass . . . not grass, but yard. And there they found the other door[.]” *Id.* at 52b–53b. “If [the officers in *Galloway*] had knocked on the door first and then were . . . *proceeding along the path that would – as someone would go to visit the home*, which is what [Deputies McCoy and Abnet] described,” the *Galloway* Court may well have upheld the knock and talk. *Id.* at 23b (emphasis added). Based on its analysis of the facts and the officers’ testimony, the trial court concluded: “I find that there was no reason for them not to go into the backyard when they believed it was a path to another door the people used to enter the building to try and gain access to talk to somebody.” *Id.* at 54b–55b.

The trial court was cognizant that a permissible knock and talk has limitations. *Id.* at 53b–54b. Indeed, it admonished the prosecutor that police officers do not “have the right to go anywhere they want on a property to knock on a door.” App at 176a. But despite the knock and talk having limitations, the court found that the officers here had not abused it. *Id.* at 53b–54b.

The evidence and testimony amply support the trial court’s factual findings and confirm that a reasonable visitor could be expected to do what Deputies McCoy and Abnet did, thus satisfying *Jardines*. The officers testified repeatedly that their purpose in going to Radandt’s house—and in approaching the back door specifically—was to “make contact” with someone in the house. App at 61a, 68a, 77a–78a, 161a, 163a. They believed that someone was home and perhaps not hearing their knocks. *Id.* at 61a–62a, 68a–69a, 88a–89a, 100a, 116a, 141a–142a, 161a, 165a–166a. Deputy Abnet believed that the rear door was a “main entrance” and possibly even “the primary door,” *id.* at 65a–67a, 87a, 100a–101a, 145a–146a, and Radandt himself admits that the rear door “was used as an entrance[.]” Def’s Br at 16. The officers could see from the layout of the house, driveway, and barn that the rear door was visible from other parts of the driveway, *id.* at 65a, 90a—a public space where visitors would have a right to be. And it was from that rear entrance that Deputy McCoy smelled marijuana and developed probable cause, thus bringing the officers within the “plain smell” exception to the warrant requirement. *People v Kazmierczak*, 461 Mich 411, 426–427 (2000). Finally, Radandt offered no witnesses to contradict the officers’ assessment of his property.

Indeed, nothing in *Jardines* prohibited the officers' actions here. As Radandt now acknowledges, it can be customary for a visitor to knock on a door other than the "front" door, including a back door. Compare Def's Br at 1 ("Appellant is not requesting a bright-line rule that officers must knock on the 'front door' first or that they may never enter the backyard . . ."), with D App for Leave to Appeal at 15 ("The Public Recognizes a Limited License to Approach the Front Door and Nothing More."). *Carman*—a case with quite similar facts, see *supra* at 14–15—indeed confirms that nothing in *Jardines* prevents officers from going to a back porch when they reasonably believe it is an entrance visitors could use—precisely what the trial court found here. *Carman*, 135 S Ct at 351 (explaining that Officer Carroll, based on the case law, "may have concluded—quite reasonably—that he was allowed to knock on any door that was open to visitors").

And while Radandt still complains that the officers "bypassed" his "front" door, Def's Br at 16, this complaint is irrelevant. The parties appeared to agree, after all, that it was reasonable for the officers not to go to Radandt's "front" door. App at 64a–65a, 152a–153a (officer testimony), 54b (trial court), 44b (Defense counsel: "What do they need to do? If they are really doing a knock and talk, they come to the premises, they knock on the side door.").

Additionally, there can be more than one customary entrance under *Jardines*, and it can be customary to knock more than once, or on more than one customary entrance. While the Court explained that the implied license to approach a house "typically" permits visitors to "approach the home by the front path, knock

promptly, wait briefly to be received, and then (absent invitation to linger longer) leave,” 133 S Ct at 1415, the Court did not purport to limit visitors or police to that one “typical” example. See *Carman*, 135 S Ct at 352 (declining to decide whether officer may go to any customary entrance, or in what sequence). Instead, as discussed above, a variety of considerations go into determining what a reasonable visitor would do given various unique circumstances. *Jardines*, 133 S Ct at 1415 n 2. *Jardines* simply did not provide the bright-line answers that Radandt requests, see Def’s Br at 9, and instead it indicated that the answers will be fact-dependent and decided case-by-case. Here, as the trial court correctly found, Deputies McCoy and Abnet had reason to follow a heavily trafficked path to a rear door that looked like a customary entryway, particularly when it was obvious that someone was home and the officers thought the occupant had not heard them.

Radandt correctly notes that multiple other appellate courts have rejected attempts by residents to limit police officers to the “front door,” or to only one of multiple customary entryways. See, e.g., *United States v Thomas*, 430 F3d 274, 276–280 (CA 6 2006) (upholding exclusive use of back door next to driveway); *United States v Garcia*, 997 F2d 1273, 1279–80 (CA 9, 1993) (officers believed back door was a customary entrance); *United States v James*, 40 F3d 850, 862 (CA 7, 1994), vacated on other grounds, 516 US 1022 (1995) (officers followed walkway to rear of duplex); *United States v Titemore*, 437 F3d 251, 253 (CA 2 2006) (officers walked across lawn to sliding door, a route visitors might take); *Trimble v State of Indiana*, 842 NE2d 798, 801–802 (Ind, 2006) (officer parked on driveway behind

house, knocked on back door); *State of New Jersey v Domicz*, 907 A2d 395 (NJ, 2006) (position of cars in driveway led officer to believe back door was used by visitors).

Indeed, the case Radandt cites for the proposition that police cannot knock more than once is not on point and involved quite different facts. In *United States v Perea-Rey*, 680 F3d 1179 (CA 9, 2012), the Ninth Circuit found it unreasonable for a border patrol agent to bypass the front door *after seeing it answered when someone else knocked*. *Id.* at 1188. The court also doubted that the agent entered the property to initiate conversation, given that his first comments to the resident effectuated a seizure. *Id.* Those circumstances are not present here.

While Radandt attempts to distinguish *Thomas* (one of the cases recognizing that there can be multiple permissible entryways) by noting that the district court had found that the back door was “customarily used as the entrance to the house” and the homeowner did not argue otherwise, Def’s Br at 19, his attempt fails. The court implicitly found the same here; Radandt notably did not produce any witnesses to rebut the officers’ perception that his rear door was a customary entryway; Radandt himself admits that the door was used as an entrance, see Def’s Br at 16; and a homeowner’s subjective understanding and intent regarding which door visitors should approach cannot control. The test set out in *Jardines* is what would be expected of a reasonably respectful visitor, *Jardines*, 133 S Ct at 1415 n 2, which is gauged from the perspective of the visitor, not the homeowner. And it makes sense that objective reasonableness is the standard: neither visitors nor police are psychic, and the police cannot be held responsible for having actual

knowledge of which entrance the resident intends to be “the” customary entrance. At the very least, any mistake here as to which was “the” customary entrance would be a reasonable mistake of fact, *Heien v North Carolina*, 135 S Ct 530, 534–536 (2014), thus precluding suppression.

Radandt’s suggestion that Deputies McCoy and Abnet acted with an improper purpose under *Jardines*, thereby negating their implied license, also fails. See Def’s Br at 23. The trial court found unequivocally that the officers approached Radandt’s door with the purpose of making contact with him, and *not* as a subterfuge to conduct a search. That factual finding, based in part on the trial court’s finding that the officers were credible, was not clearly erroneous. The facts of this case are not like those in *Jardines* and *Galloway*, where the officers did not even attempt to knock on the resident’s door, rendering their actions demonstrably inconsistent with an intent to contact the resident. *Jardines*, 133 S Ct at 1416–1417; *People v Galloway*, 259 Mich App 634, 643–647 (2003). The police did not need to bring a drug dog onto Jardines’s porch in order to contact him, and the police in *Galloway* knocked on the door only *after* they “charged like stormtroopers to the back of the yard” and seized the resident. No such facts here suggest that Deputies McCoy and Abnet were trying to do anything other than a knock and talk.

Moreover, the fact that Deputies McCoy and Abnet may have hoped to get information does not render their knock and talk impermissible. Contra Def’s Br at 8, 12. A hope to get information or even evidence is indeed the purpose of every knock and talk. E.g., *Jardines*, 133 S Ct at 1416 n 4 (“The mere purpose of

discovering information [] in the course of [a knock and talk] does not cause it to violate the Fourth Amendment.”); see also *Galloway*, 259 Mich App at 647 (“[T]he fact that the motive for the contact in a knock and talk is an attempt to secure consent to search does not alter its nature as an ordinary citizen contact.”).

Finally, the facts that the officers knocked on additional doors after developing probable cause and that they had been to the property once before are irrelevant. The question for this Court is whether the officers developed probable cause for the search warrant from a lawful vantage point—here, the rear door—and for all of the reasons above, they did. Additionally, their finding of probable cause in December 2011 was independent of their visit to the property in August 2011. It was not their summer visit that prompted them to return to the property in December; indeed, the officers openly acknowledged that they did not have probable cause after the summer visit and that they took no further action after the initial visit. Instead, what prompted them to return in December was another tip of potential drug activity. Further, their finding of probable cause in no way depended on the results of their summer visit, as smelling marijuana alone was sufficient to support a finding of probable cause. *Kazmierczak*, 461 Mich at 421–422.

Deputies McCoy and Abnet acted as reasonable visitors would under the circumstances. For that reason, this Court should affirm.

**C. A ruling for Radandt would muddle the law and conflict with *Jardines*, *Carman*, and this Court's precedents.**

A ruling for Radandt would amount to one of two things: (1) adoption of a bright-line rule inconsistent with the fact-bound reasonable-visitor standard of *Jardines*, or (2) rejection of the trial court's amply supported and un rebutted factual and credibility findings. Neither outcome is appropriate.

While the People agree with Radandt that a knock and talk is limited to "ordinary citizen conduct," Def's Br at 9, a ruling for Radandt on these facts would amount to a ruling as a matter of law that:

- a visitor cannot follow a heavily trafficked path to what, by all indications, looks like a customary entrance;
- a visitor may never enter a back yard, even if a rear door reasonably appears to be a customary entrance;
- it is unreasonable to knock at a door that the homeowner *admits* is used as an entrance;
- it is never reasonable to knock on a door twice, even if it reasonably appears that someone is home and perhaps not hearing the knocks; or
- a visitor may never knock on more than one customary entrance, even if he reasonably is not sure which is the primary door that the residents will hear.

*Jardines* and *Carmen* stand for none of those bright-line rules. Instead, the constitutional standard is reasonableness under the circumstances. While Radandt argues that he does not want police to have greater rights than ordinary citizens, Def's Br at 8, what he really wants is for them to have a *lesser* license than ordinary citizens. But that is not the law. A ruling for Radandt, in light of a trial court finding that the officers approached what they credibly and reasonably believed was a customary entrance, would create confusion and uncertainty for officers where a

residence has no clear main door, or where it appears that visitors customarily use multiple entrances.

Though it would hamper officers' ability to make quick decisions in unique settings, Radandt's rule would add nothing to the protections of the Fourth Amendment. A ruling for Radandt would not protect property rights any more than restricting "knock and talks" to ordinary visitor behavior, as *Jardines* does, nor would it provide more robust protection of a resident's expectations of privacy. Knocking at a back door—so long as it is an entryway that visitors could be expected to use—does not constitute a trespass or disrupt a resident's reasonable expectations of privacy. See *Thomas*, 430 F3d at 280; *Titemore*, 437 F3d at 259; *James*, 40 F3d at 862; *Garcia*, 997 F2d at 1279–80; *Domicz*, 907 A2d at 405; *Trimble*, 842 NE2d at 801–02. Likewise, Radandt's rule also would not provide greater safeguards against non-consensual searches. *Thomas*, 430 F3d at 277–79.

Mandating that officers may never go to a rear door, must divine which of multiple customary entryways is "the" primary entryway, or may knock only once, or on one door, also creates unnecessary guesswork for police and courts. Cf. *Atwater v City of Lago Vista*, 532 US 318, 347–350 (2001) (disfavoring rules that create guesswork for police and do not aid administrability).

Absent a bright-line rule not supported by *Jardines*, Radandt is left with a simple disagreement with the trial court's findings of fact. Indeed, he invites this Court to substitute its own findings and find that the knock and talk here was a

subterfuge for an illegal search, Def's Br at 21–23—a finding that the trial court unequivocally rejected. This Court should decline Radandt's invitation.

**II. Even if it were not reasonable to think Radandt's back door was a place visitors could be expected to go, the good-faith exception to the exclusionary rule should apply.**

Even if this Court finds that the officers exceeded the scope of a permissible knock and talk, application of the exclusionary rule is not warranted here, where the police acted non-culpably, reasonably relied on existing appellate precedent, and reasonably relied on a search warrant issued by a neutral and detached magistrate.

**A. The good-faith exception to the exclusionary rule applies where police behavior is not culpable and exclusion would not result in appreciable deterrence.**

The Constitution does not require suppressing evidence obtained through a Fourth Amendment violation. Instead, the exclusionary rule is a “prudential” doctrine: it is “a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved.” *United States v Leon*, 468 US 897, 906 (1984); *Davis v United States*, 131 S Ct 2419, 2426 (2011).

Because the exclusionary rule is not constitutionally required, Michigan is free to restrict its use. *People v Goldston*, 470 Mich 523, 538 (2004) (“[T]his Court remains free to repudiate or modify the exclusionary rule[.]”). This Court has held that the Michigan Constitution indeed does *not* place greater restrictions on law enforcement activities than the federal Constitution, and that, “[i]n fact, the

contrary intent is expressed.” *Id.* at 536–537, quoting *People v Nash*, 418 Mich 196 (1983). With respect to the exclusionary rule specifically, Michigan policy is to “move away from the [] rule . . . as a matter of state constitutional law and to restrict application of the judicially created remedy.” *Goldston*, 470 Mich at 537; see also *People v Hawkins*, 468 Mich 488, 500 n 9 (2003) (by not considering effect of error or guilt of defendant, rule lacks proportionality).

The federal courts have likewise restricted application of the judge-made rule, noting its high social costs—namely, the exclusion of relevant evidence of guilt and “letting guilty and possibly dangerous defendants go free—something that offends basic concepts of the criminal justice system.” *Herring v United States*, 555 US 135, 140 (2009). Because the sole purpose of the exclusionary rule is to deter misconduct by law enforcement, the U.S. Supreme Court has repeatedly reminded courts to apply it *only* when application will further the rule’s deterrence purpose. *Davis v United States*, 131 S Ct 2419, 2426–27, 2432 (2011).

But just some deterrence value is not enough. *Id.* at 2427. “[M]arginal” or incremental deterrence will not justify “the substantial costs of exclusion.” *Herring*, 555 US at 146. Exclusion is a “bitter pill” that society must swallow only as a “last resort” when the benefits of suppression outweigh its heavy costs. *Davis*, 131 S Ct at 2426–2427; see also *People v Frazier*, 478 Mich 231, 247–250 (2007). The burden is on those urging its application to show that application in a particular setting meets this test. *Hudson v Michigan*, 547 US 586, 591 (2006).

The deterrence value of exclusion “var[ies] with the culpability of the law enforcement conduct at issue.” *Davis*, 131 S Ct at 2427 (focus is on the “flagrancy” of the misconduct). “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.” *Id.* “Indeed, the abuses that gave rise to the exclusionary rule featured intentional conduct that was patently unconstitutional.” *Herring*, 555 US at 143. 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.” *Davis*, 131 S Ct at 2427–2428 (citations and quotations omitted).

Because the deterrence benefits of targeting non-flagrant police behavior are so low, the U.S. Supreme Court has long applied a reasonable good-faith exception to the exclusionary rule. See, e.g., *Leon*, 468 US at 907–908 (“Particularly when law enforcement officers have acted in objective good faith or their transgressions have been minor, the magnitude of the benefit conferred on such guilty defendants offends basic concepts of the criminal justice system.”); *Herring*, 555 US at 142. Thus, the good-faith exception both allows evidence to be admitted, and protects officers from civil liability via qualified immunity. *Heien*, 135 S Ct at 539.

**B. Deputies McCoy and Abnet reasonably relied on then-existing appellate precedent and therefore fall within *Davis's* good-faith exception.**

Suppression is not warranted in this case because, among other reasons, Deputies McCoy and Abnet reasonably conducted their knock and talk in accordance with then-existing appellate precedent.

**1. When the police conduct a search in objectively reasonable reliance on binding appellate precedent, the exclusionary rule does not apply.**

In *Davis v United States*, 131 S. Ct. 2419 (2011), the Supreme Court confronted whether to apply the exclusionary rule when the police conduct a search in objectively reasonable reliance on binding judicial precedent. *Id.* at 2428. “Because suppression would do nothing to deter police misconduct in these circumstances, and because it would come at a high cost to both the truth and the public safety,” the Court held that “searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule.” *Id.* at 2423–2424; see also *People v Short*, 289 Mich App 538, 540 (2010).

Penalizing police officers for conforming their conduct to existing case law could not logically contribute to the deterrence of Fourth Amendment violations. *Davis*, 131 S Ct at 2429. Indeed, all that exclusion would deter is conscientious police work. *Id.* “[W]hen binding appellate precedent specifically authorizes a particular police practice, well-trained officers will and should use that tool to fulfill their crime-detection and public-safety responsibilities.” *Id.* at 2429. Accordingly, the “absence of police culpability doom[ed] *Davis's* claim.” *Id.* at 2428. Exclusion in

such cases “deters no police misconduct and imposes substantial social costs.” *Id.* at 2434. Thus, “[e]vidence obtained during a search conducted in reasonable reliance on binding precedent is not subject to the exclusionary rule.” *Id.* at 2429.

**2. The knock and talk that led Deputies McCoy and Abnet to Radandt’s rear door unquestionably complied with then-existing appellate precedent.**

When Deputies McCoy and Abnet followed a path to Radandt’s back door amidst signs that someone was home, they acted in full compliance with then-existing precedent from both this Court and the Sixth Circuit.

Binding Sixth Circuit precedent, for example, held that it is permissible for police to go to a back deck when they have reason to think someone is home, *even where the back deck is part of the curtilage and no path invites visitors to it*. In *Hardesty v Hamburg Township*, 461 F3d 646 (CA 6, 2006), two officers had “observed lights in the house go off” as they approached the residence to conduct a knock and talk. *Id.* at 649. They “pounded on the front door, but received no response.” *Id.* Believing that someone was home, they telephoned the homeowner’s house and workplace, but did not reach him. When a third officer arrived, the officers “went around to the back of the house to try to contact the people inside.” *Id.* The three officers went onto the Hardestys’ back deck and “looked through the windows and sliding glass door into the house.” *Id.* The court specifically noted that there were “no pathways leading from the front yard or front door to the deck.” *Id.* When police saw through the window an apparently unconscious young man with blood on his hands and pants, they entered the house to do a well-being check.

*Id.* at 649–50. Though the young man was uninjured, he and his friend were charged with being minors in possession of alcohol.<sup>3</sup> *Id.* at 650.

In the parents' subsequent § 1983 suit against the officers, the Sixth Circuit rejected the Hardestys' argument that the officers violated their Fourth Amendment rights by entering the back deck. *Id.* at 652–54. While the court agreed that the back deck was indeed part of the curtilage, *id.* at 653, it held that “where knocking at the front door is unsuccessful in spite of indications that someone is in or around the house, an officer may take reasonable steps to speak with the person being sought out *even where such steps require an intrusion into the curtilage.*” *Id.* at 654 (emphasis added). Thus, “the officers’ decision to proceed around the house to seek out a back door was within the scope of the knock and talk investigative technique already recognized in this circuit.”<sup>4</sup> *Id.* The court specifically noted that the Third, Fourth, Eighth, and Ninth Circuits had all ruled that a knock and talk can be extended from the front door to the back door or back yard when attempting to make contact with the residents. *Id.* at 654; see also *People v Pemberton*, unpublished opinion per curiam of the Court of Appeals, issued

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<sup>3</sup> The Livingston Family Court and the 53rd District Court dismissed the charges against Tim Brewer and Joseph Hardesty, ruling that the officers’ entry of the home was illegal. See *Hardesty v Hamburg Twp*, 352 F Supp 2d 823, 826 (ED Mich 2005). It appears that the Court of Appeals did not have occasion to consider this question.

<sup>4</sup> The Sixth Circuit’s decision in *United States v Thomas*, 430 F3d 274, 280 (6th Cir. 2005), was not to the contrary. In *Thomas*, the court distinguished a case from the District of Connecticut by noting that the back deck in *Thomas* was the primary entrance. *Id.* at 279–280. But the *Thomas* court did not hold that that was the only circumstance under which it is permissible to go to a rear door, and the discussion was dicta in any event because *Thomas* did not argue that he had a reasonable expectation of privacy in his friend’s back deck. *Id.*

Apr 3, 2003 (Docket No. 238522) (Attachment 1), p 2 (reasonable to move to back yard if officers think resident may be in yard).

Deputies McCoy and Abnet also lawfully approached Radandt's back door under binding precedent from this Court. In *People v Powell*, 477 Mich 860 (2006), this Court upheld an officer's entry into the defendant's back yard, holding that the Court of Appeals had erred in finding the area to be curtilage where the back yard "was not enclosed" and "in plain view of defendant's neighbors" and the defendant had "expended no effort whatsoever to protect her claimed expectation of privacy in the area." *Id.* at 861. This was despite that passersby could not see the back yard, and despite that the back yard was "immediately next to the back of the residence," "partially enclosed by a fence," and included a deck attached to the house. *People v Powell*, unpublished opinion per curiam of the Court of Appeals, issued Apr 18, 2006 (Docket No. 256878) (Attachment 2), p 2, rev'd, 477 Mich 860 (2006).

Then-existing precedent from this Court also established that a technical trespass did not transform an otherwise reasonable investigation into an unreasonable search. In *People v Houze*, 425 Mich 82 (1986), this Court upheld the officers' "entry onto the curtilage and observation by police into the garage" where the garage abutted a public alley from a common access route and the entry and observation were "limited and reasonable under the circumstances." *Id.* at 92–94. This Court held that "entry of the police onto defendant's property, *even if involving a technical trespass*," was reasonable. *Id.* at 94 (emphasis added).

Binding precedent as of 2011 from the Court of Appeals also indicated to Deputies McCoy and Abnet that their knock and talk was lawful. While the Court of Appeals held in *People v Galloway* that a warrantless raid on defendant's back yard exceeded the scope of a lawful knock and talk where multiple police officers "charged like stormtroopers to the back of the yard" and seized the property owner without even purporting to knock on the door, the court suggested that entering the back yard may have been permissible if the trial court had credited an officer's testimony that "he was attempting to locate the owner . . . to execute the knock and talk." 259 Mich App at 644–647. According to the court, "[t]he dispositive issue" was whether the knock and talk "can be used as the premise for a warrantless entry . . . to justify the seizure of evidence under the plain view exception to the warrant requirement," *id.* at 636—something that the trial court here unequivocally held that Deputies McCoy and Abnet did not do. Defense counsel's argument to the trial court in this case confirmed this understanding of *Galloway*: "[G]alloway stands for, if it's not designed to obtain consent, it's not a proper use of a knock and talk. . . . [Galloway] says, the difference between an investigative measure and a reasonable ordinary contact—it's very clear—if it's not designed to obtain consent, it's not ordinary contact." App at 47b.

Thus, even if this Court were to conclude that Deputies McCoy and Abnet did not reach Radandt's back door via a path that a reasonable visitor could be expected to follow, thus violating *Jardines*, their actions were fully consistent with binding appellate precedent at the time of their knock and talk. *Hardesty* permitted officers

to enter a back yard, go onto a back deck, and look into a sliding-door window because they believed someone was home, even where no path led visitors to the back. Here, there was a path. The knock and talk also was lawful under *Powell* and *Houze*, where Radandt's back yard was in view of the neighbors, App at 60a, 81a, and the back deck and door were visible from an abutting public space—namely, the driveway. And, the knock and talk was lawful under *Galloway* where the trial court unequivocally held that the officers' purpose was to make contact with Radandt. Indeed, the fact that both the trial court and Court of Appeals cited the above case law in finding no Fourth Amendment violation confirms that the officers' reliance on it was reasonable. See App at 22b–23b, 27b–28b, 51b–52b (citing *Galloway*, *Houze*); App at 197a (citing *Powell*, *Houze*, *Hardesty*).

Thus, the *Davis* exception applies: the knock and talk that brought Deputies McCoy and Abnet to Radandt's back door, conducted in objectively reasonable reliance on binding appellate precedent, is not subject to the exclusionary rule.

**C. Deputies McCoy and Abnet reasonably relied on a search warrant issued by a neutral and detached magistrate, and thus they fall within *Leon*'s good-faith exception.**

The good-faith exception is also warranted here because Deputies McCoy and Abnet conducted their knock and talk in reasonable good faith, disclosed the circumstances to a neutral and detached magistrate, and reasonably relied on the resulting search warrant.

In *Leon*, the Court held that “the marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a

subsequently invalidated search warrant cannot justify the substantial costs of exclusion.” *Leon*, 468 US at 922. This Court adopted the *Leon* exception in *People v Goldston*, 470 Mich 523 (2004). For *Leon* to apply, the officers seeking the warrant must have acted in reasonable good faith, the magistrate must not be acting as a “rubber stamp,” and reliance on the resulting search warrant must be objectively reasonable. *Leon*, 468 US at 914, 922–923, 926.

Deputies McCoy and Abnet conducted their knock and talk in reasonable good faith, and their belief in the validity of the resulting search warrant was objectively reasonable. As discussed above, the trial court found that they were honest and credible and did not act with an improper purpose, and a reasonably well-trained officer could have believed that their knock and talk comported with the law. *Leon*, 468 US at 926. The officers also were not “dishonest or reckless in preparing their affidavit,” *id.*, which fully informed the magistrate that they had visited Radandt’s house twice, viewed it from all sides, and entered his back yard. See App at 1b–2b. As the trial court persuasively reasoned, if Deputies McCoy and Abnet had been trying to conceal unlawful behavior, they would have omitted such facts, which potentially cut against the lawfulness of their actions. App at 54b–55b. Instead, they candidly told the magistrate that they went behind the residence. Moreover, they did not search Radandt’s house “until they had prudently obtained warrants.” *United States v White*, 890 F2d 1413, 1419 (CA 8, 1989).

Nothing suggests that the magistrate was acting as a rubber stamp or had “abandoned his detached and neutral role.” *Leon*, 468 US at 914, 926. The affidavit

disclosed the circumstances of the knock and talk and provided the magistrate with “a substantial basis for determining” probable cause, *id.* at 915, and the magistrate made a reasonable decision based on the facts and law at the time. As discussed above, then-existing law permitted this knock and talk, or at the very least, its application to these facts was unclear. *Leon*, 468 US at 926 (affidavit “related the results of an extensive investigation and, as the opinions of the divided panel of the Court of Appeals make clear, provided evidence sufficient to create disagreement among thoughtful and competent judges as to the existence of probable cause”).

Given that both the police officers and the magistrate at all times acted in reasonable good faith, it should not change the analysis whether the knock and talk is subsequently determined to be unlawful. Indeed, the premise of *Leon* and the good-faith exception is that a Fourth Amendment violation occurred.

In the prototypical *Leon* example, the police officer made a mistake about the existence of probable cause. It matters not whether an officer mistakenly but in good faith believed he had probable cause, or mistakenly but in good faith conducted a search subsequently ruled unlawful. Cf. *Herring*, 555 US at 147 (applying good-faith exception despite Fourth Amendment violation from police department negligence); *People v Hill (Eric)*, 299 Mich App 402, 411, 414 (2013) (applying good-faith exception despite subsequent determination that circumstances did not support community-caretaker exception to warrant requirement); *People v Corr*, 287 Mich App 499, 508 (2010) (mere fact of illegal arrest does not mandate exclusion; only when police employ detention as tool to gather evidence); *People v Jordan*, 187

Mich App 582, 588–589 (1991) (suppressing evidence seized pursuant to warrant obtained from unlawful initial search, without discussing *Leon*, under circumstances where officer had no reasonable basis to believe search was lawful).

Indeed, while the *Leon* Court noted the absence of “police illegality” and explained that there was “thus nothing to deter,” *id.* at 921, a lack of probable cause is also a police mistake. Yet the Court specifically rejected the argument that applying the exclusionary rule where police failed to demonstrate probable cause “deters future inadequate presentations or magistrate shopping and thus promotes the ends of the Fourth Amendment.” *Leon*, 468 US at 918. The Court dismissed that argument as “speculative” and concluded that evidence should be suppressed only on a case-by-case basis and “only in those unusual cases in which exclusion will further the purposes of the exclusionary rule.” *Id.*

Thus, the question is not whether an unlawful predicate search occurred. Instead, it is whether the police who applied for the warrant acted in objective good faith. *Leon*—by its terms—applies only where the police action that grounds the warrant is conducted in reasonable good faith. *Leon*, 468 US at 923 n 24; *Herring*, 555 US at 140.

The case law confirms this. Indeed, the majority of cases Radandt cites for the proposition that an illegal predicate search precludes *Leon* involve *objectively unreasonable predicate searches or bad faith*. See *United States v Fugate*, unpublished opinion of the Sixth Circuit, issued Sept 7, 2012 (Docket No. 11-3694) (Def’s Br Attachment 2) (entered back yard and house at night solely to conduct

search); *United States v Davis*, 430 F3d 345, 357–358 & n.4 (CA 6, 2005) (omitted key detail from affidavit); *United States v Reilly*, 76 F3d 1271, 1281 (CA 2, 1996) (clear bad faith); *United States v Bishop*, 264 F3d 919, 924 n.2 (CA 9, 2001) (“little doubt” that predicate search lacked probable cause); *United States v Scales*, 903 F2d 765, 766–768 (CA 10, 1990) (took defendant’s bag for 7 hours to drive it to drug dogs 2.5 hours away); *United States v Villard*, 678 F Supp 483, 492 (D NJ, 1988) (rifled through photo films in closet to pass the time); *State v DeWitt*, 910 P2d 9, 13 (Ariz, 1996) (officers’ actions belied “post hoc” claim of exigent circumstances, which was “unpersuasive at best”); *State v Reno*, 918 P2d 1235, 1245 (Kan, 1996) (affidavit “misleading” due to “omissions and false implications”); *State v Carter*, 630 NE2d 355, 362 (Ohio, 1994) (reasonable officer would not have believed search was justified). But see *People v Machupa*, 872 P2d 114, 124 (Cal, 1994) (declining to apply *Leon* to unlawful predicate search, regardless of good faith of officers).

In contrast, where police performed the predicate search in reasonable good faith, courts tend to allow the *Leon* exception even though the predicate search was unlawful. See, e.g., *United States v McClain*, 444 F3d 556, 559 (CA 6, 2006); *United States v Fletcher*, 91 F3d 48, 51–52 (CA 8, 1996); *White*, 890 F2d at 1419; *United States v Thomas*, 757 F2d 1359, 1368 (CA 2, 1985). So long as all actors are acting in reasonable good faith, as *Leon* requires, Radandt’s fears are unfounded.

Additionally, this Court has correctly held that the *Leon* magistrate exception applies where the officer who applied for the search warrant also executed the warrant. *People v Adams (Shawn)*, 485 Mich 1039, 1039 (2010). *Cf. Herring*, 555

US at 146 (“If the police have been shown to be reckless in maintaining a warrant system, or to have knowingly made false entries to lay the groundwork for future false arrests, exclusion would certainly be justified[.]”). The fact that the officer seeking the affidavit must at all times act in objective good faith for the *Leon* exception to apply removes any potential concerns about applying the exception when the officer applying for the warrant also executes it.

**D. *Herring v United States* confirms that exclusion is unwarranted here.**

Finally, *Herring v United States*, 555 US 135 (2009), confirms that exclusion is unwarranted here where the police behavior was not culpable and exclusion would not result in appreciable deterrence. “To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system.” *Id.* at 144. “[T]he exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence.” *Id.* The purported violation here falls into none of those categories.

First, the police behavior was not flagrant. The trial court correctly found that Deputies McCoy and Abnet were honest and credible, and that they did not act with an improper purpose. And, even if this Court were to disagree that the knock and talk here was permitted under then-existing case law, its permissibility was at least a close legal question complicated by several factors—e.g., what door visitors could lawfully approach, how many times they could knock, what happens when it

looks like someone is home, which ambiguous entrance was “the” primary entrance at Radandt’s house, among other open questions. Cf. *Carman*, 135 S Ct at 352 (expressly declining to rule whether it violated Fourth Amendment for officer to approach rear slider door, believing it a customary entrance, and holding any such rule not clearly established by *Jardines* even today). Indeed, the U.S. Supreme Court has suggested that an officer’s reasonable mistake about what the Fourth Amendment requires under particular circumstances can give rise to a good-faith exception. See *Heien*, 135 S Ct at 539 (noting that an officer’s mistaken view about what the Fourth Amendment requires goes to the matter of remedy, not violation); *Id.* at 544, 546–547 (Sotomayor, J., dissenting) (indicating that an officer’s reasonable mistake of law, which Justice Sotomayor viewed as equivalent to mistakes of Fourth Amendment law, would often give rise to the good-faith exception to the exclusionary rule).

The lower courts’ opinions below confirm that Deputies McCoy’s and Abnet’s reliance on existing case law was reasonable. The fact that the magistrate did not notice anything unlawful when reviewing the warrant application and that both the trial court and the Court of Appeals found no Fourth Amendment violation corroborates that a reasonably well-trained police officer could have thought the knock and talk at Radandt’s rear door was permitted. See *Leon*, 468 US at 926 (“[A]s the opinions of the divided panel of the Court of Appeals make clear, [the affidavit] provided evidence sufficient to create disagreement among thoughtful and competent judges as to the existence of probable cause.”).

At most, going to Radandt's back door amounted to isolated negligence that was not recurring or systemic and that exclusion would not appreciably deter. There is no suggestion and no evidence in the record, for example, that Deputies McCoy and Abnet, or even others in their department, routinely misused the knock and talk tactic. See, e.g., *Herring*, 555 US at 146–47 (“[T]here is no evidence that errors in Dale County’s system are routine or widespread.”); *Hudson*, 547 US at 604 (Kennedy, J., concurring) (noting that no widespread pattern of knock-and-announce violations had been shown). And the Court has made clear that minimal general deterrence of negligence is not enough: “We do not quarrel with [the dissent’s] claim that ‘liability for negligence . . . creates an incentive to act with greater care,’ and we do not suggest that the exclusion of this evidence could have *no* deterrent effect. But our cases require any deterrence to ‘be weighed against the substantial social costs of the exclusionary rule,’ and here exclusion is not worth the cost.” *Herring*, 555 US 144 n 4 (citations omitted).

Finally, police are effectively deterred from illegal behavior through several mechanisms besides the exclusionary rule. Even if the exception to the good-faith rule for flagrant illegality were not enough, police are also deterred by the threat of civil liability, litigation costs, and attorney’s fees. See *Hudson*, 547 US at 596–598. They are also subject to several strong institutional deterrents, including increasing professionalism of police forces and an emphasis on internal police discipline. *Hudson*, 547 US at 598–599. Internal reprimands can limit or destroy successful careers. Also, municipalities have an incentive to ensure proper conduct because

“[f]ailure to teach and enforce constitutional requirements exposes municipalities to financial liability.” *Id.* Any additional deterrence here for non-culpable police conduct would be incremental only and not worth exclusion’s heavy costs. *Herring*, 555 US 144 n 4.

### CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, the People request that this Court affirm the decision of the Court of Appeals.

Respectfully submitted,

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Dated: November 10, 2015

# ATTACHMENT 1

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

April 3, 2003

Plaintiff-Appellee,

v

No. 238522

Charlevoix Circuit Court

CHARLES RAYMOND PEMBERTON,

LC No. 00-053109-FH

Defendant-Appellant.

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Before: Kelly, P.J. and White and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of manufacture of a controlled substance (marijuana), MCL 333.7401(2)(d)(iii), and possession of a controlled substance (marijuana), MCL 333.7403(2)(d). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Facts and Procedural History

Charlevoix County Sheriff Deputy James Pettis and Michigan State Police Sergeant William Sybesma went to defendant's home to attempt to speak with defendant on what is termed a "knock and talk" mission. See, *People v Frohriep*, 247 Mich App 692; 637 NW2d 562 (2001), lv den 466 Mich 888 (2002). The officers' intention was to see if defendant would voluntarily respond to an allegation that he was growing marijuana. The allegation was apparently made by an acquaintance who was arrested for drunk driving.

While Pettis entered defendant's enclosed front porch, Sybesma stood near the southern end of the home. No one answered the knock. Pettis testified that because it was a sunny day, they went to the rear of the home to see if anyone was outside. The two officers then located a small trail on the southern end of the property and, allegedly thinking that the occupant may have walked into the woods, the two proceeded along the path for approximately twenty yards. Pettis stated that they then returned to the rear of the trailer where he knocked on the back door. He again received no reply.

Thereafter, the officers returned to the car by walking around the northern end of the home because it was the shortest path back to their car. While proceeding to the car, Pettis saw a small hose running out a window toward the ground. His eyes followed the hose and he saw a marijuana plant growing in a black plastic pot in an area near some brush and a lawn statue.

The plant was approximately ten feet from the trailer. The officers seized the plant and took pictures of the home and surrounding area. Pettis maintained that he was not looking for contraband. Although Sybesma admitted that he thought they might find marijuana plants along the trail or in the yard, he would not characterize their observations as “searching”.

After hearing testimony and the parties’ arguments, the trial court concluded that the officers were justified in their decision to attempt to speak with defendant about the information they had received, that they could have reasonably believed that defendant was in the back yard of the home given the weather and that they were acting reasonably when they decided to take the most direct route back to their police car after knocking on defendant’s back door. The court found that defendant did not have a reasonable expectation of privacy in the open area at the back of his home, citing the lack of signs indicating “Keep Out” or “No Trespassing.” The court also indicated that it would still have found the officers’ actions reasonable even if they were involved in a “technical trespass.” The court did not find credible Pettis’ testimony that he was not looking for marijuana when the officers were proceeding down the path but this did not affect its decision.

## II. Analysis

Defendant argues the trial court erred in denying his motion to suppress the marijuana found by police officers. We disagree. In a suppression hearing, this Court reviews a trial court's factual findings for clear error and will affirm unless left with a definite and firm conviction that a mistake was made. *People v Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002). However, we consider de novo the trial court's ultimate ruling on defendant's motion to suppress. *Id.*

The plain-view exception to the warrant requirement allows seizure of objects falling within the plain view of an officer who has a right to be in the position to have that view. *Horton v California*, 496 US 128, 134-137; 110 S Ct 2301; 110 L Ed 2d 112 (1990); *People v Tisi*, 384 Mich 214, 218; 180 NW2d 801 (1970); *People v Jordan*, 187 Mich App 582, 588; 468 NW2d 294 (1991). Two conditions must be satisfied. First, there must be prior justification for the officer’s intrusion into an otherwise protected area. *Coolidge v New Hampshire*, 403 US 443, 466; 91 S Ct 2022, 2038; 29 L Ed 2d 564 (1971); *People v Blackburne*, 150 Mich App 156, 165; 387 NW2d 850 (1986). Second, the evidence must be obviously incriminatory or contraband. *People v Champion*, 452 Mich 92, 101; 549 NW2d 849 (1996). *Blackburne, supra*. Contrary to defendant’s position on appeal, the discovery of the evidence need not be inadvertent. *Champion, supra*, 452 Mich 101 n 6. Nor are exigent circumstances required. *Id.*

Although this case presents a close question, after review of the record we conclude that the trial court’s factual findings were supported by the evidence and were not clearly erroneous. The officers entered the front of defendant’s property for a legitimate purpose; i.e., to speak with him about the information they had received. *Frohriep, supra*, 247 Mich App 697-698. The officers’ decision to move to the rear of the home after receiving no response at the front, because they thought that defendant may have been outside in the yard, was reasonable. The public was not barred from approaching this area of defendant’s house, nor were the officers placed on notice of an intent to exclude entry through the use of “No Trespassing” signs or similar devices. MCL 750.552; *People v Nash*, 418 Mich 196, 206; 341 NW2d 439 (1983); *People v Shankle*, 227 Mich App 690, 693-694; 577 NW2d 471 (1998).

In addition, the fact that the officers discovered the plant while traversing the most direct route from the north side of defendant's home to their car, does not render their discovery more intrusive. In essence, the officers discovered the plant in a place where a public visitor to the property would have felt justified in being present. Thus, we affirm the trial court's decision to refuse to suppress the evidence. See *People v Houze*, 425 Mich 82, 92 n 1; 387 NW2d 807 (1986), citing with approval *State v Seagull*, 26 Wash App 58; 613 P 2d 528 (1980).

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Joel P. Hoekstra

**ATTACHMENT 2**

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENISE LOUISE POWELL,

Defendant-Appellant.

---

UNPUBLISHED

June 7, 2005

No. 256878

Livingston Circuit Court

LC No. 04-014120-FH

Before: Cooper, P.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

Defendant was charged with manufacturing less than twenty marijuana plants, in violation of MCL 333.7401(2)(d)(iii). Defendant appeals by leave granted the trial court's denial of her motion to suppress evidence. Specifically, defendant challenges the legality of the investigating officer's entrance into her backyard without a warrant, which enabled the officer to observe and confiscate thirteen marijuana plants growing in a vegetable garden directly behind and next to defendant's home. We conclude that the evidence should have been suppressed as the result of an unconstitutional search and, therefore, reverse.

Hamburg Township Police Officer Megan Pingston testified at the suppression hearing that after receiving an anonymous tip that marijuana was being grown in a garden at defendant's home, she responded to the home in order to investigate the allegation. When she arrived, Pingston parked in the driveway and proceeded to the front door where she either knocked or rang the doorbell. Although she could hear a dog barking from inside the home, Pingston testified that no one responded to the front door and that, despite having been informed by the anonymous tipster that the homeowners may have been on vacation at that time, she decided to go into the backyard to determine if anyone was "back there." She entered the backyard by walking through the side yard next to the home's garage. Pingston testified that there was no sidewalk in this area and that a split-rail fence ran along the property line. As Pingston rounded the back corner of the home she immediately observed marijuana growing in a garden located next to the house, directly under a window and adjacent to the back patio. Pingston testified that the garden was not visible from the roadway or from her initial position at the front of the home.

At the conclusion of the motion hearing the trial court denied the motion to suppress, reasoning that the absence of any fencing or signage prohibiting access to the backyard and the reasonableness of both the route taken by Pingston and her belief that someone may have been

outside in the backyard that morning justified her entry into the backyard. This Court granted leave to appeal the trial court's decision in that regard.

We review a trial court's factual findings in a suppression hearing for clear error and will affirm those findings unless left with a definite and firm conviction that a mistake has been made. *People v Powell*, 235 Mich App 557, 560; 599 NW2d 499 (1999). However, the trial court's application of constitutional standards to the facts is not afforded such deference. *People v Stevens*, 460 Mich 626, 631; 597 NW2d 53 (1999). We review de novo the trial court's ultimate decision on a motion to suppress evidence. *Powell, supra*.

Both the United States and the Michigan Constitutions protect citizens against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. Absent an exception, a seizure conducted without a warrant is unconstitutional and the evidence obtained must be excluded. See *Terry v Ohio*, 392 US 1, 12-13; 88 S Ct 1868; 20 L Ed 2d 889 (1968); *People v Goldston*, 470 Mich 523, 528-529; 682 NW2d 479 (2004). The plain view exception to the warrant requirement allows the police to seize objects falling within the plain view of an officer who has a right to be in the position to have that view. *Harris v United States*, 390 US 234, 236; 88 S Ct 992; 19 L Ed 2d 1067 (1968); *People v Houze*, 425 Mich 82, 91; 387 NW2d 807 (1986). In the present case there is no question that the seized marijuana was in plain view. Therefore, the applicability of the plain view exception turns on whether Officer Pingston observed the marijuana from a position where she had a lawful right to be.

Generally, the Fourth Amendment protects persons against warrantless searches of the curtilage of a person's home, which has been described as the outside areas of a home "so intimately tied to the home itself" that an individual reasonably could expect persons to treat those areas as part of the home. *United States v Dunn*, 480 US 294, 300-301; 107 S Ct 1134; 94 L Ed 2d 326 (1987). The controlling test, however, is whether the police activity violated the defendant's reasonable expectation of privacy. *Katz v United States*, 389 US 347, 360; 88 S Ct 507; 19 L Ed 2d 576 (1967); *People v Whalen*, 390 Mich 672, 677; 213 NW2d 116 (1973).

Here, we conclude that in traversing the side yard of defendant's home in order to gain access to the backyard, Pingston invaded a portion of the curtilage of defendant's home to which defendant possessed a reasonable expectation of privacy. The record established that defendant's home is a single-family ranch. The marijuana seized in this case was planted at the rear of the home next to a backyard patio and immediately adjacent to the house itself and was not visible from the front of the house where a visitor would normally go to gain access to the premises, as Pingston did when she initially approached the residence. Ordinarily, access to the patio area was gained through the interior of the home via a sliding glass door, but access to the backyard area was also possible by walking through a narrow, grassy area along side the house, which was the means used by Pingston. However, although this side area provides access to a side door leading into the garage, past this door and well before one could observe the patio area, the trees, shrubs, landscaping, and fencing along the property line clearly suggest that further access to the home and its curtilage was not provided or welcome by proceeding beyond that door. Stated another way, the side yard area past the door to the garage, which Pingston walked through to gain access to the backyard area, was landscaped to communicate privacy and showed no evidence of use inconsistent with the landscaping. Further, the absence of "no trespassing" signage or fencing does not implicate the obvious message that access to the backyard by strangers is not provided by proceeding alongside the house.

The prosecution argues that because Pingston was engaged in a “knock and talk” procedure, her entrance into the backyard was proper and the subsequent seizure of the plainly viewed marijuana lawful. However, although this Court has approved the use of the knock and talk procedure as a valid police tactic for securing consent to search a premise where the police do not have enough information to obtain a warrant, we have expressly held that use of that procedure is nonetheless “subject to judicial review to ensure compliance with general constitutional protections,” in particular those guaranteed by the Fourth Amendment. See *People v Frohriep*, 247 Mich App 692, 698; 637 NW2d 562 (2001) As one noted legal treatise provides:

[W]hen the police come on to private property to conduct an investigation or for some other legitimate purpose and restrict their movements to places visitors could be expected to go (e.g., walkways, driveways, porches), observations made from such vantage points are not covered by the Fourth Amendment. But other portions of the lands adjoining the residence are protected, and thus if the police go upon these other portions and make observations there, this amounts to a Fourth Amendment search . . . . [LaFave, 1 Search & Seizure (4<sup>th</sup> ed), Residential Premises, § 2.3(f), pp 600-603.]

As explained above, Pingston failed to restrict her movements within the curtilage of defendant’s home “to places visitors could be expected to go” and, in doing so, engaged herself in a search of defendant’s property that was violative of the Fourth Amendment protection against unreasonable searches and seizure. *Id.*

Reversed.

/s/ Jessica R. Cooper

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra