

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1411

September Term, 2014

JEFFREY E. MILLS

v.

STATE OF MARYLAND

Krauser, C.J.
Graeff,
Friedman,

JJ.

Opinion by Krauser, C.J.

Filed: October 26, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of *stare decisis* or as persuasive authority. Md. Rule 1-104.

Jeffrey E. Mills appeals from the denial, by the Circuit Court for Charles County, of his motion to suppress evidence that was seized by the police after they purportedly entered his home unlawfully and in violation of the Fourth Amendment. Finding no error or abuse of discretion by the circuit court in denying that motion, we affirm.

Facts

At about 9:30 a.m. on November 5, 2013, Christopher Koenig, Mills's employer, called "911" and reported that he was very worried about Mills because had not seen or heard from him for more than five days. Officer Ronald Walls and Officer Charles Garner of the Charles County Sheriff's Department were then dispatched to Mills's home to check on his welfare. When the two officers arrived at Mills's residence, they knocked on the front door. They called out for Mills but received no response. The officers then circled the house, checking for signs of forced entry and knocking repeatedly on windows and the back door. They called out to anyone who might be in the house, but to no avail. At that time, all of the windows of Mills's house were covered, except for the window into the kitchen. Through that window, the officer's observed that the house was in disarray, with trash and clothes strewn all about. Moreover, the officers could hear a dog barking continuously inside the house.

At some point while the officers were circling Mills's house, they attracted the attention of one of Mills's neighbors. The neighbor informed the officers that Mills's white

truck, which was usually gone during the day, had not been moved and that she had not seen any activity in Mills's house for several days.

After unsuccessfully knocking and calling Mills's name for more than ten minutes, the officers grew concerned that Mills was either injured or possibly dead inside his home. When Officer Walls opened the flap on the back door, which covered the dog entrance, the officers observed that the house was in disarray, that there were no lights on inside, and that there was a "foul odor," suggesting either "a dead body," or "burnt trash." Concerned over what he had seen and smelled, Officer Walls squeezed through the dog entrance into Mills's residence and then unlocked the back door to admit Officer Garner.

Inside Mills's home, the officers repeatedly announced their presence and called out Mills's name. As they moved through the house looking for Mills and banging on the interior doors, they heard nothing except a dog barking. But, as they approached the end of the hallway, Mills came out of the last room on the right side of the hall, opening the door just enough to squeeze through and then quickly closing the door behind him. Notwithstanding Mills's efforts to conceal what was in the room, Officer Walls observed "a forest of marijuana plants" inside the room Mills had just exited.

After questioning Mills to verify his identity and to be sure that he was "okay," the officers informed him that his employer had called "911" to have the police check on him.

Mills assured the officers that he was fine, as he ushered them to the front door of his home. The officers left Mills's residence but remained in sight of the property.

The officers then called their supervisor, Sergeant Joseph Prada,¹ and a detective in the Narcotics Enforcement Division and reported the large number of marijuana plants in Mills's house. Sergeant Prada instructed the officers to secure the residence until he arrived. A few minutes later, after Sergeant Prada had arrived, the officers observed smoke coming from Mills's chimney.

Fearing that Mills was destroying the marijuana that Officer Walls had seen in the house, the officers knocked on Mills's front door. When Mills opened the door, Sergeant Prada told him that one of the officers had seen the marijuana and asked if they could come in. Mills agreed. After Mills told the officers that he was growing marijuana to supplement his income, they requested that he open the now locked door to the room inside of which Officer Walls had seen the marijuana. When Mills complied, the officers, concerned that Mills had been burning the marijuana in his wood stove, entered the room and found marijuana. The officers then detained Mills until the vice detectives arrived.

Having secured a search warrant, the vice detectives went to Mills's home. When they arrived, they executed the warrant and seized sixty-six marijuana plants, florescent glow lights, water filtration systems, and chemicals consistent with growing marijuana. Mills was

¹At the time of Mills's trial, Sergeant Prada had been promoted to Lieutenant.

then arrested and subsequently charged with manufacturing marijuana; possession of marijuana with the intent to distribute; and possession of devices and materials necessary for the production, sale, and distribution of marijuana.

Suppression Hearing

Prior to Mills's trial, his counsel moved to suppress the fruits of the warrantless entry into and search of his home, including his statements to the police indicating that he was growing the marijuana to supplement his income, as well as all of the evidence found during the subsequent execution of the warrant obtained by the vice detective. Defense counsel argued that the evidence was seized after the police entered Mills's home illegally and in violation of the Fourth Amendment and, therefore, should be suppressed under the "fruit of the poisonous tree" doctrine.

After a hearing, the circuit court denied Mills's motion to suppress, finding that, based on the report of Mills's employer and neighbor, the officers' own observations of the house in disarray, and the dog continuously barking, the officer's reasonably believed that Mills could be seriously injured, ill, or deceased inside his home. Thus, the officers entered Mills's home, not for investigatory purposes, but to ensure Mills's safety, a finding further confirmed, said the court, by the fact that they left the home immediately after locating Mills and finding that he was fine. Consequently, the court concluded that, as the officers were

simply performing a community caretaking function, there was no violation of Mills's Fourth Amendment rights and, therefore, no basis upon which to grant his motion to suppress.

After his motion was denied, Mills entered a plea agreement with the State, whereby he agreed to enter a conditional plea of guilty to the charges against him in return for a reduced sentence. The circuit court subsequently accepted Mills's plea and thereafter sentenced him to serve a term of two years' imprisonment for each of the three offenses, each of which was to be served concurrently with the other two. This appeal followed.

Discussion

Mills contends that the circuit court erred in denying his motion to suppress. He claims the police officers' entry into his home violated his Fourth Amendment right to be free of unreasonable searches and seizures. Nor was the entry lawful under the "community care taking doctrine," he asserts, because there was no evidence that he was in immediate need of medical assistance or to justify concern over his welfare.

The standard of review in such cases is well established:

In reviewing a circuit court's grant or denial of a motion to suppress evidence, we ordinarily consider only the evidence contained in the record of the suppression hearing. The factual findings of the suppression court and its conclusions regarding the credibility of testimony are accepted unless clearly erroneous. We review the evidence and the inferences that may be reasonably drawn in the light most favorable to the prevailing party. We undertake our own constitutional appraisal of the record by reviewing the law and applying it to the facts of the present case.

McFarlin v. State, 409 Md. 391, 403 (2009) (quoting *Rush v. State*, 403 Md. 68, 82 (2008) (citations omitted)).

The Fourth Amendment to the United States Constitution provides, in relevant part, that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. U.S. Const. Amend. IV. Generally, the Fourth Amendment bars the police from entering an individual’s home, without a warrant, to effect an arrest or to search for evidence of criminal wrongdoing. *See, e.g., Welsh v. Wisconsin*, 466 U.S. 740, 748-49 (1984) (“searches and seizures inside a home without a warrant are presumptively unreasonable” (citations omitted)). There are, however, numerous exceptions to the warrant requirement. The burden of proving such an exception rests on the State. *State v. Bell*, 334 Md. 178, 191 (1994) (citing *Stackhouse v. State*, 298 Md. 203, 217 (1983)).

The State asserts that the police officers were justified in entering Mills’s home to ensure his welfare pursuant to their “community caretaking function.” The community caretaking doctrine “encompasses at least three other doctrines,” two of which, the “emergency aid doctrine” and the “public servant exception,” are potentially applicable in the instant case. *Wilson v. State*, 409 Md. 415, 430 (2009).

The “emergency aid doctrine” permits police to enter an individual’s home lawfully to assist someone with an obvious need for emergency assistance. *See, e.g., State v.*

Alexander, 124 Md. App. 258, 269-70 (1998) (describing an officer’s obligation to act without delay to assist an individual obviously experiencing a medical emergency); *Wilson*, 409 Md. at 432 (opining that an officer “should be able to act without a warrant when they reasonably believe a person needs immediate attention”). The public servant exception applies to other “non-criminal, non-investigatory” searches that require “objective, specific and articulable facts to support [an officer’s] concern” for the health or safety of an individual or the public. *Wilson*, 409 Md. at 437, 439. When a police officer uncovers evidence of a crime in the course of his non-investigatory caretaking duties, that evidence need not be suppressed for failure to obtain a warrant. *Alexander*, 124 Md. App. at 277-80.

The Court of Appeals has advised that, in order to support a warrantless intrusion with a non-investigatory purpose, an officer

must have objective, specific and articulable facts to support his or her concern. If the citizen is in need of aid, the officer may take reasonable and appropriate steps to provide assistance or to mitigate the peril. Once the officer is assured that the citizen is no longer in need of assistance, or that the peril has been mitigated, the officer’s caretaking function is complete and over. Further contact must be supported by a warrant, reasonable articulable suspicion of criminal activity, or another exception to the warrant requirement. The officer’s efforts to aid the citizen must be reasonable. In assessing whether law enforcement’s actions were reasonable, [courts] consider the availability, feasibility and effectiveness of alternatives to the type of intrusion effected by the officer.

Wilson, 409 Md. at 439. We review an officer’s non-investigatory search of an individual’s property to determine “whether [the police] possessed a reasonable basis for doing what they did.” *Olson v. State*, 208 Md. App. 309, 359, n.18 (2012)(quoting *Alexander*, 124 Md. App. at 277).

An objective standard as to the reasonableness of the officer’s belief must be applied. Thus, the question is whether there were reasonable grounds to believe that some kind of an emergency existed, that is, whether there is evidence which would lead a prudent and reasonable official to see a need to act. The officer must be able to point to specific and articulable facts which, taken with rational inferences from those facts, reasonably warrant that intrusion.

Id. (quoting *Alexander*, 124 Md. App. at 277 (internal quotation marks omitted)) (modification omitted).

It is clear that the police officers did not enter Mills’s home because they suspected him of any criminal activity, but out of concern for his welfare. Prior to entering Mills’s home, the officers knew from Mills’s employer that Mills had, uncharacteristically, failed to come to work for a number of days, prompting his employer to become so concerned that he called “911.” Moreover, a neighbor of Mills reported that she had not seen any activity in Mills’s house and had noticed that his truck had not been moved in several days. Furthermore, the officers could hear the continuous barking of a dog inside Mills’s house and observed the general disarray of Mills’s home through the uncovered kitchen window. Then, although the officers circled the house for more than ten minutes, banging on the doors and

windows, and calling out to Mills, Mills failed to respond in any way. Finally, once Officer Walls pushed open the dog door, he observed a strong unpleasant smell like a “dead body” inside the house. The officers testified that they acted based on their belief that Mills was either injured or dead inside his home.

Once the officers were inside Mills’s home, they properly limited their actions, serving their non-investigatory purpose. They repeatedly identified themselves as “the police” and called out for Mills. After checking the kitchen and living room, the officers moved down the hallway, banging on closed doors and, again, calling out for Mills. As soon as Mills came out of the room at the end of the hall, identified himself, and assured the officers of his well-being, the officers left, making no further effort to search the house, even though Officer Garner had observed a “forest of marijuana plants,” in plain view, in the back room. Having fulfilled their duty to insure Mills’s health and safety, the officers then proceeded to investigate what they reasonably believed to be Mills’s criminal activities.

Based on the evidence presented, the circuit court found, at the conclusion of the suppression hearing, that the officers’ concern for Mills’s well-being was justified, and that their entry into his home was reasonable and pursuant to their community caretaking functions, whereupon they observed, in plain view, evidence of Mill’s criminal activities. Thus, Mills’s Fourth Amendment rights were not violated by the subsequent search and seizure at issue. *See Alexander*, 124 Md.1 App. at 277-80 (holding that evidence found while

an officer is engaged in non-investigatory caretaking duties need not be excluded). We conclude, therefore, that the circuit court did not err in denying Mills's motion to suppress.

**JUDGMENTS OF THE CIRCUIT COURT
FOR CHARLES COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**