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# Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

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**CR-20-0609**

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**Charlie James Byrd**

**v.**

**State of Alabama**

**Appeal from Montgomery Circuit Court  
(CC-18-1452)**

KELLUM, Judge.

The appellant, Charlie James Byrd, pleaded guilty to unlawful possession of a controlled substance and was sentenced to 60 months in

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prison, which sentence was suspended and he was ordered to serve 12 months in the Montgomery County jail followed by 24 months of supervised probation. Before pleading guilty, Byrd specifically reserved his right to appeal the circuit court's ruling denying his motion to suppress the evidence obtained as a result of the search of Byrd's jacket. See Green v. State, 200 So. 3d 677, 679 (Ala. Crim. App. 2015) ("The only way to invoke the limited right to appeal a guilty-plea conviction and sentence is to reserve and preserve an issue or to file a motion to withdraw the guilty plea.").

In September 2018, Byrd was indicted for the unlawful possession of a controlled substance -- delta-9-tetrahydrocannabinol (synthetic marijuana,) -- a violation of § 13A-12-212, Ala. Code 1975. (C. 45.) In June 2019, Byrd moved to suppress the evidence that formed the basis of the charges against him. (C. 67-70.) After a hearing, the circuit court denied the motion. (C. 77.), and Byrd pleaded guilty, reserving his right to appeal that ruling. This appeal followed.

At the suppression hearing, Officer Cain Gray of the Montgomery Police Department testified that he was dispatched to Byrd's address

because paramedics had been called to his address and "the medics had put a -- like a safety alert on the dispatch. So anytime medics were called out to that address, officers have to go out first and make contact, and then they'll call the medics in."<sup>1</sup> (R. 6.) Officer Gray testified:

"The fire medics had showed up, and they were dealing with Mr. Byrd, I guess getting his vital signs and stuff like that. And then originally he wanted to go with the medics, so they were waiting for the transport ambulance company to come. And then someone had said something about grabbing his jacket. And it was draped over the -- the porch, so I went up and grabbed it and checked it for weapons or knives or anything like that, and I had found a pill bottle. And then --

"....

"So I had felt the pill bottle. And I know he was complaining. I think, about chest pain. So I had removed [the pill bottle] to make sure he wasn't on any medications and gave it over to the medics, because they're going to need to know that when they transport him to the hospital.

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<sup>1</sup>"A 911 call is one of the most common -- and universally recognized -- means through which police and other emergency personnel learn that there is someone in a dangerous situation who urgently needs help. This fits neatly with a central purpose of the exigent circumstances (or emergency) exception to the warrant requirement, namely, to ensure that the police or other government agents are able to assist persons in danger or otherwise in need of assistance." United States v. Richardson, 208 F.3d 626, 630 (7th Cir. 2000).

"And there wasn't a label on it. And there was -- it looked like -- a little bit like marijuana, but it didn't smell like it."<sup>2</sup>

(R. 7-8.) Officer Gray said that after he pulled the pill bottle from Byrd's jacket, Byrd got upset. After observing the contents of the bottle, Officer Gray arrested Byrd for possession of a controlled substance.

At the conclusion of the suppression hearing, the State argued:

"The [officer] was making sure that Mr. Byrd was actually going to be cared for while -- and if he felt a pill bottle, think that there were -- there was medication inside that the medics needed to know about, he was simply performing that function. I think that those reasons support the search here. And once he pulled out the pill bottle, he could see inside of it and at that point develop the probable cause that it contained controlled substance."

(R. 23.)

On appeal, Byrd contends that the evidence of the controlled substance found in the pill bottle should have been suppressed because, he argues, the State failed to establish sufficient grounds to justify the

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<sup>2</sup>A certificate of analysis was admitted into evidence at the suppression hearing. This report showed that the substance found in the pill bottle was identified as "delta-9-tetrahydrocannabinol a C-1 controlled substance." (C. 117.)

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warrantless search of his jacket. Specifically, Byrd argues that there were no valid grounds to search his jacket because, he says, the need for emergency medical attention had passed. The State argues that the search was lawful based on the emergency exception to the warrant requirement.

"Because only the arresting officer testified at [Byrd's] suppression hearing, and the evidence was ... undisputed, the decision of the trial court should be reviewed de novo." Worthy v. State, 91 So. 3d 762, 765 (Ala. Crim. App. 2011).

The Alabama Supreme Court has recognized that circumstances surrounding police involvement in rendering emergency assistance may support a warrantless search. The Supreme Court in State v. Clayton, 155 So. 3d 290 (Ala. 2014), stated:

"The United States Supreme Court has held that ' "[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency." ' Mincey v. Arizona, 437 U.S. 385, 392–93, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978) (quoting Wayne v. United States, 318 F.2d 205, 212 (D.C. Cir. 1963)). For example, law-enforcement officers can enter a residence without a warrant to render emergency assistance to an injured person or to protect a person from immediate injury.

Mincey, 437 U.S. at 392, 98 S.Ct. 2408. Moreover, the state of mind of the law-enforcement officer is immaterial 'as long as the circumstances, viewed objectively, justify [the officer's] action.' Scott v. United States, 436 U.S. 128, 138, 98 S.Ct. 1717, 56 L.Ed.2d 168 (1978)."

155 So. 3d at 298.

"[E]mergency-assistance searches are exercises of the police's 'community caretaking' function. See Cady [v. Dombrowski], 413 U.S. [433] at 441–43, 93 S.Ct. [2523] at 2528–29, 37 L.Ed.2d [706] at 714–16 [(1973)]; [United States v.] Cervantes, 219 F.3d [882] at 889 [(9th Cir. 2000)]. Therefore, they do not require probable cause -- at least in the criminal sense. However, unlike inventory and administrative searches, emergency-assistance searches are not 'undertaken pursuant to a general scheme without individualized suspicion' (City of Indianapolis v. Edmond, 531 U.S. 32, 45–46, 121 S.Ct. 447, 456, 148 L.Ed.2d 333, 346 (2000)). Although the officer need not have probable cause to believe that a crime has been committed, he or she must have reasonable grounds to believe that there is an emergency requiring immediate assistance. People v. McGee, 140 Ill. App. 3d 677, 680, 95 Ill. Dec. 218, 489 N.E.2d 439 (1986); People v. Brooks, 7 Ill. App. 3d 767, 775, 289 N.E.2d 207 (1972). Also, the need to respond to an emergency does not give the police a general warrant to search wherever they want. Rather, the intrusion 'must be "strictly circumscribed by the exigencies which justify its initiation." ' Mincey [v. Arizona], 437 U.S. [385] at 393, 98 S.Ct. [2408] at 2413, 57 L.Ed.2d [290] at 300 [(1978)], quoting Terry v. Ohio, 392 U.S. 1, 26, 88 S.Ct. 1868, 1882, 20 L.Ed.2d 889, 908 (1968). Thus, unlike an inventory or administrative search, an emergency-assistance search does require a type of individualized suspicion, albeit not one of criminal activity."

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People v. Lewis, 363 Ill. App. 3d 516, 526, 300 Ill. Dec. 618, 628, 845 N.E.2d 39, 49 (2006).

Although emergency assistance usually involves entering a residence without a warrant, this exception has been applied to the search of an individual's personal items.

"Typically, courts discuss the emergency-aid exception in cases that involve a 'trespass investigation' -- police entering a person's home in response to an emergency inside. See, e.g., [State v.] Neighbors, 299 Kan. [234] at 250-53, 328 P.3d 1081 [(2014)]. This case does not involve such facts. But the district court found that the reasoning behind that exception was equally applicable to Officer Brown's search of Smith's purse due to her medical emergency."

State v. Smith, 59 Kan. App. 2d 28, 34-35, 476 P.3d 847, 852 -53 (2020).

The Smith court further stated:

"We conclude there is no bright-line demarcation that defines when officers' limited authority to conduct a warrantless search under the emergency-aid exception ends. Instead, the touchstone of a court's analysis is reasonableness: whether the officers reasonably believe the search is necessary to provide emergency assistance and whether the search itself is reasonable in manner and scope.

"....

"As with any exception to the Fourth Amendment's warrant requirement, the scope of any search under the

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emergency-aid exception must be strictly circumscribed by a real exigency justifying the warrantless intrusion. Here, Officer Brown's actions were reasonably tailored to her attempts to aid emergency medical personnel in rendering appropriate care and treatment to Smith. We conclude Officer Brown's search of Smith's purse was justified by the emergency-aid exception to the warrant requirement. "

Smith, 59 Kan. App. 2d at 37-38, 476 P.3d at 854.

Here, Officer Gray grabbed Byrd's jacket off of the front porch after being asked to do so when the paramedics arrived. Officer Gray merely patted Byrd's jacket to check for weapons and felt a pill bottle. Byrd was on his way to the hospital and had complained of chest pains. Officer Gray testified that he believed that the bottle might contain a medication that Byrd was currently using. The officer's conduct was limited to a patdown of Byrd's jacket -- no intrusive search was conducted. Further, the search conducted was limited in scope based on the medical emergency. Therefore, we agree with the circuit court that there was no violation of the Fourth Amendment warrant requirement in this case because the search was justified under the emergency-assistance exception to the warrant requirement. Accordingly, Byrd's motion to suppress was properly denied.



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For the above reasons, we affirm Byrd's conviction for possession of a controlled substance.

AFFIRMED.

Cole, J., concurs. McCool, J., concurs in the result. Windom, P.J., dissents. Minor, J., dissents, with opinion.

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MINOR, Judge, dissenting.

On February 23, 2018, Charlie James Byrd telephoned for an ambulance because he was having chest pains. Because the address in Montgomery where Byrd was located had a "safety alert," two officers from the Montgomery Police Department, including Officer Cain Gray, responded to the call to make sure it was safe for medical personnel to assist Byrd. Once Officer Gray determined it was safe, medics from the fire department began assisting Byrd.

While the fire medics were waiting for the ambulance to arrive, "someone ... said something about grabbing [Byrd's] jacket." (R. 7.) Officer Gray got the jacket from the porch and "checked it for weapons." (R. 7.) As he searched the jacket, he felt a pill bottle inside a pocket of the jacket. Officer Gray said that because Byrd had complained of chest pain, he removed the pill bottle "to make sure [Byrd] wasn't on any medications and give it over to the medics, because they [were] going to need to know that when they transport[ed] him to the hospital." (R. 7-8.)

Officer Gray said that the pill bottle was "see-through" amber and was unlabeled. (R. 9.) He said he could see the contents through the pill

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bottle and that it "looked ... a little bit like marijuana, but ... didn't smell like [marijuana]." (R. 8.) Officer Gray said that after he found the bottle, Byrd, who until then had been "peaceful and calm," became "upset ... [a]nd ... ended [up] ... denying the medics" and did not go with them. (R. 9-10.) Officer Gray then arrested Byrd for possession of a controlled substance. (R. 9.)

Testing of the substance in the pill bottle showed that it was synthetic marijuana. In September 2018, a Montgomery grand jury indicted Byrd for unlawful possession of a controlled substance. Byrd moved to suppress the evidence from the warrantless search of his jacket. After a hearing at which Officer Gray was the only witness, the circuit court denied the motion. Byrd pleaded guilty, reserving for appeal the propriety of the circuit court's denial of his motion to suppress.

On appeal, Byrd argues that the State did not present sufficient evidence to justify the warrantless search of his jacket that led to the discovery of the bottle containing synthetic marijuana.

The Fourth Amendment to the United States Constitution states:

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"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 person or things to be seized."

See also Article I, § 5, Ala. Const. of 1901 (Off. Recomp.)

"This court has long held that warrantless searches are per se unreasonable, unless they fall within one of the recognized exceptions to the warrant requirement. These exceptions are: (1) plain view; (2) consent; (3) incident to a lawful arrest; (4) hot pursuit or emergency; (5) probable cause coupled with exigent circumstances; (6) stop and frisk situations; and (7) inventory searches."

Hinkle v. State, 86 So. 3d 441, 451 (Ala. Crim. App. 2011) (cleaned up).

The State argues that the search was reasonable under the "emergency exception" to the warrant requirement. The main opinion agrees, holding that the search was justified under the emergency exception to the warrant requirement. The main opinion relies primarily on principles of law stated in two decisions: State v. Clayton, 155 So. 3d 290 (Ala. 2014), and State v. Smith, 59 Kan. App. 2d 28, 476 P.3d 847 (2020). The facts in those cases, however, are distinguishable from those in Byrd's case.

In Clayton, law-enforcement officers responded to "a dispatch indicating that a methamphetamine laboratory was in operation at an apartment on Stonehenge Drive in Montgomery." 155 So. 3d at 292.

"Officer [James] Taylor and Sgt. [James] Hall testified that when they arrived at the apartment complex they could smell an odor that they knew from their training and experience was consistent with the chemicals used during the production of methamphetamine. Officer Taylor described the odor as a distinct, strong, 'ammonia-like,' nauseating odor that is easily recognizable once one knows it to be consistent with the process of manufacturing methamphetamine. Sgt. Hall described the odor as very strong, pungent, and offensive, explaining that it almost burned the sinuses when inhaled.

"The officers, in an effort to determine the origin of the odor, knocked on the door of the apartment. The officers testified that when [Justin Andrew] Bailey opened the door the odor they knew to be consistent with the manufacture of methamphetamine grew stronger. The officers informed Bailey that they had received calls about a strong odor coming from his residence and that it had been reported that a methamphetamine laboratory was being operated in the apartment. Bailey responded that the calls had to be prank calls because no illegal activity was going on in the apartment. Sgt. Hall informed Bailey and [Jennifer Leigh] Clayton, who was also present with two small children, that law-enforcement officers had to enter the apartment and conduct a protective sweep to clear the residence of all occupants so that the fire department could enter and check the apartment for safety reasons.

"Sgt. Hall and Officer Taylor testified that they then searched each room of the apartment 'to make sure there was nobody else in the apartment.' Officer Taylor testified that they spent approximately five minutes in the apartment and that the apartment 'appeared to be safe.' Sgt. Hall testified that because of the odor he and his officers did not stay in the apartment long, just 'long enough to make sure that the apartment was clear, long enough to allow the infant to be properly clothed for the cold weather.' After Officer Taylor and Sgt. Hall completed the protective sweep and left the apartment with Bailey, Clayton, and her two children, they turned the apartment over to the firefighters, who went inside to 'mak[e] sure there [were] no chemicals in there that could explode endangering the other residents in the building.' Additionally, law-enforcement officers had the residents of the other apartments leave their residences until the fire department determined that they were not in danger from the process of manufacturing methamphetamine and it was safe to reenter the apartments.

"During the firefighters' search of the apartment, they located a methamphetamine 'laboratory' inside a cooler in a closet. The laboratory was not operating at the time. After the firefighters showed the laboratory to Sgt. Hall, Sgt. Hall notified the on-call narcotics officer, Detective Joel Roberson. Sgt. Hall testified that even after the methamphetamine laboratory was found he and the officers continued to secure the area because 'people can get hurt from the odors' and 'meth labs are known to explode.'

"Detective Roberson testified that when he arrived at the apartment complex he could smell an odor that, based on his training and experience, he knew to be consistent with the odor created during the manufacture of methamphetamine. Detective Roberson stated that when he entered the

apartment with the Montgomery Fire Department's hazardous-materials crew a member of the crew showed him a foam cooler, which contained 'everything you needed to [manufacture] methamphetamine.' Detective Roberson also found other materials in the apartment known to be associated with manufacturing methamphetamine, including lithium batteries, a funnel hidden under a bed, and small plastic bags. After Detective Roberson had photographed the methamphetamine laboratory, a crew from the Drug Enforcement Administration collected and disposed of the materials.

"When questioned at the hearing on the motion to suppress about the reason for conducting a warrantless entry into and search of the apartment, Sgt. Hall testified that '[m]eth[amphetamine] labs are known to explode as well as produce noxious fumes that can harm people' and that his intent in going into the apartment was 'to make sure that the public remain safe.' Sgt. Hall further stated that when he was 'clearing' the apartment he felt like he was in danger and could be harmed by the odor. He stated that he limited the number of officers who entered the apartment because of the adverse health effects breathing the chemicals used in the manufacture of methamphetamine can cause. Sgt. Hall testified that he filed a letter of notice with his supervisor documenting that he had been exposed to a methamphetamine laboratory in case health issues later arose from the exposure. When defense counsel asked Sgt. Hall if he felt like he was in immediate danger, Sgt. Hall responded: 'Yes, sir. I did .... Due to the odor that I was smelling, and I knew ... what those odors can cause, harmful to me, so yes, sir, I did feel like that I was in danger and could be harmed.'

"Likewise, Officer Taylor testified that, because of the odor, he did not want to enter the apartment. He explained

that, although the odor in the apartment did not appear to hurt him, Sgt. Hall, Clayton, Bailey, or the children, an emergency situation existed because 'there was still the odor.'

"Detective Roberson testified that the manufacture of methamphetamine creates a high risk of explosion because the chemicals used in the process become extremely volatile when combined and can react violently, bursting into flames. He further testified that the manufacture of methamphetamine creates a health hazard for anyone who is near the methamphetamine laboratory. He explained:

" 'If you can smell it, you're at risk. The proper way to handle this [investigation of a methamphetamine laboratory is] ... anybody that goes anywhere near this lab should have on a respirator, protective clothing, protective suit and that kind of stuff... You know, it can—anywhere that there is air ducts, air vents that the chemicals can travel, it can affect those areas, too.' "

155 So. 3d at 292-93.

Based on the extensive testimony above, the Alabama Supreme Court held that "the law-enforcement officers had probable cause to believe that methamphetamine was being manufactured inside the apartment." 155 So. 3d at 302. The Court also held that "the process of manufacturing methamphetamine, in light of its explosive nature, creates



an exigent circumstance." Id. Thus, the Court held that the warrantless entry and search of the apartment was justified.

In Smith, the Kansas Court of Appeals upheld a warrantless search by law-enforcement officers of Brittany Smith's purse in which they found "prescription and nonprescription medications and a pipe covered with 'crystal-like residue and burnt residue.' 59 Kan. App. 2d at 31, 476 P.3d at 850. The officers in that case, Officer Hannah Brown and Sergeant Eric Buller,

"went to check on a woman who had apparently fallen asleep in her car. The sleeping woman, later identified as Smith, had been delivering the local paper when she backed into a residential driveway; a concerned neighbor called the police after Smith remained in the running car for 45 minutes, hunched over behind the wheel.

"The officers approached the vehicle and began knocking on the slightly cracked driver's side window, attempting to wake Smith. When Smith did not rouse, Officer Brown said, 'I'm gonna open the door. She's not responding.' The officers continued to bang on the window for several minutes, but Smith remained unresponsive. Upon seeing paperwork on top of a bundle of newspapers with the name 'Brittany Smith' on it, Officer Brown called dispatch and attempted to confirm Smith's identity; she stated 'Brittany Smith is the paper carrier listed for this route' and then asked dispatch to 'locate anything in house for a Brittany Smith.' Dispatch informed Officer Brown that there were two Brittany Smiths in the

system with similar dates of birth, heights, weights, and physical descriptions.

"While Officer Brown spoke to dispatch, Sergeant Buller unsuccessfully attempted to pull down the driver's side window but managed to widen the opening. The officers then attempted to use a lockout kit—essentially a stick with a hook—to open the car door. Sergeant Buller poked Smith in the head with the lockout tool numerous times, but she remained unresponsive. Another officer told Officer Brown over the radio that he was familiar with a Brittany Smith who had a history of opioid use, so the officers decided to call EMS, concerned that Smith was potentially overdosing. At that time, Officer Brown was still not '100 percent' certain about which Brittany Smith she was dealing with.

"The officers were eventually able to get the car door open with the lockout tool. When the door opened, Smith slumped forward and Officer Brown pulled her up by her hoodie; Smith put her hands to her face and gradually began to wake up, but she remained unresponsive and continued to cover her face. Hutchinson firefighters and paramedics soon arrived and began to provide Smith with emergency medical care. Officer Brown asked her if her name was 'Brittany Smith'; Smith nodded in response, but Officer Brown was still unsure which Brittany Smith she was.

"As the emergency medical personnel took over, Officer Brown stated she was 'familiar with [Smith] and mentioned the possibility that Smith was overdosing on opioids. Officer Brown then briefly patted Smith down to check for any needles; Smith remained confused and largely unresponsive as she mumbled short, incoherent responses to questions from Officer Brown and EMS.

"As the firefighters and paramedics were caring for Smith, Officer Brown stated, 'Where's her purse? I'm gonna try to find her ID.' Officer Brown then asked Smith for consent to search her purse to confirm her identity and '[t]o make sure she was treated correctly [by EMS] and make sure she—it was her.' At this point, Officer Brown had confirmed Smith's birthday with dispatch prior to searching the purse and 'had a strong idea of who she was.' Officer Brown later testified that the main reason she searched the purse was to look for Smith's identification. But Officer Brown also stated she was looking for prescriptions in Smith's purse, trying to help inform EMS about what Smith might have overdosed on.

"When looking through Smith's purse, Officer Brown found prescription and nonprescription medications and a pipe covered with 'crystal-like residue and burnt residue.' Smith's identity was confirmed via the prescription medications, but Officer Brown never found her driver's license. By the time Officer Brown finished the search of the purse, Smith had been loaded in the ambulance.

"After Smith headed to the hospital in the ambulance, Officer Brown began searching Smith's car, looking '[f]or identification and any substance, prescriptions, nonprescription that she might have ODD on.' Officer Brown found a spoon with a cotton ball and residue on it under the car's radio. The officer then went to speak to Smith at the hospital, advised her of her Miranda rights, and interviewed her about the drugs and paraphernalia found in the purse and car."

59 Kan. App. 2d at 29-31, 476 P.3d at 849-50.

Summarizing the facts before it that justified the warrantless search the Kansas court stated:

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

59 Kan. App. 2d at 35-36, 476 P.3d at 853.

As the main opinion recognizes, "'emergency-assistance searches are exercises of the police's 'community caretaking' function.'" \_\_\_\_ So. 3d at \_\_\_\_ (quoting People v. Lewis, 363 Ill. App. 3d 516, 526, 300 Ill Dec. 618,

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628, 845 N.E.2d 39, 49 (2006)). The United States Supreme Court recently stated:

"To be sure, the Fourth Amendment does not prohibit all unwelcome intrusions 'on private property'... — only 'unreasonable ones. We have thus recognized a few permissible invasions of the home and its curtilage. Perhaps most familiar, for example, are searches and seizures pursuant to a valid warrant. See Collins v. Virginia, 584 U.S. \_\_\_, \_\_\_, 138 S. Ct. 1663, 1670-71 (2018). We have also held that law enforcement officers may enter private property without a warrant when certain exigent circumstances exist, including the need to 'render emergency assistance to an injured occupant or to protect an occupant from imminent injury.' ' Kentucky v. King, 563 U.S. 452, 460, 470, 131 S. Ct. 1849 (2011); see also Brigham City v. Stuart, 547 U.S. 398, 403-404, 126 S. Ct. 1943 (2006) (listing other examples of exigent circumstances). And, of course, officers may generally take actions that 'any private citizen might do' ' without fear of liability. E.g., Florida v. Jardines, 569 U.S. [1,] 8 [(2013)] (approaching a home and knocking on the front door)."

Caniglia v. Strom, \_\_\_ U.S. \_\_\_, \_\_\_, 141 S. Ct. 1596, 1599 (2021).

The facts of Byrd's case are not like those in Clayton, which involved the continuing danger of a methamphetamine laboratory in an apartment complex. And unlike the defendant in Smith, who was mostly unable to communicate with officers or medical personnel and appeared to need immediate medical attention, Byrd was able to communicate and, despite

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having requested medical assistance, refused that assistance after Officer Gray found the pill bottle in his jacket.

I agree that the State offered evidence justifying Officer Gray's retrieving of the jacket and his brief patdown of the jacket to check it for a weapon. But I do not think the State's evidence showed that the emergency justified Gray's retrieving the pill bottle during his warrantless search of Byrd's jacket. The evidence was undisputed that Byrd could communicate with Gray and with medical personnel, and, indeed, medical personnel heeded Byrd's decision to reject their assistance. Thus, I dissent.