

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (3d) 081041–UB

Order filed January 26, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit
Plaintiff-Appellant,)	Will County, Illinois
)	
v.)	Appeal No. 3-08-1041
)	Circuit Court No. 06-CF-2445
)	
SAUL MARTINEZ,)	Honorable
)	Amy Bertani-Tomczak,
Defendant-Appellee.)	Judge, Presiding

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Schmidt and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held:* Upon vacation of this court's earlier judgment in this case and upon reconsideration in light of *People v. McDonough*, 239 Ill. 2d 260 (2010), we again conclude that the trial court did not err in granting the defendant's motion to quash his arrest and suppress evidence. It was not objectively reasonable under the facts and circumstances for the arresting officer to block the defendant's vehicle in a well-lighted commercial parking lot during business hours as a community caretaking function, nor did the officer have a reasonable and articulable suspicion of illegal activity such as to justify a warrantless stop and search of the defendant.

¶ 2 The defendant, Saul Martinez, was charged with unlawful possession of a controlled substance. He filed a motion to quash his arrest and suppress evidence, which was granted, and the State filed this appeal challenging the court's ruling. On March 16, 2010, this court affirmed the trial court's ruling. See *People v. Martinez*, No. 3–08–1041 (2010) (unpublished under Supreme Court Rule 23). The State subsequently petitioned for leave to appeal to our supreme court. The supreme court denied the petition, but, in the exercise of its supervisory authority, ordered this court to vacate its earlier judgment and reconsider its decision in light of *People v. McDonough*, 239 Ill. 2d 260 (2010). Upon reconsideration in light of *McDonough*, we again affirm.

¶ 3 BACKGROUND

¶ 4 At the hearing on his motion, the defendant testified that on September 25, 2006, at about 12:15 a.m., he was driving his four-door Pontiac Grand Prix near the corner of Weber Road and Norman Town Road in Romeoville, Illinois. His fiancée, Victoria Kaminski¹, was a passenger in the front passenger's seat. The defendant testified that he drove the Grand Prix into the Gas City parking lot "by the food pantry." The area where he parked had multiple stalls for vehicles but was poorly lighted. After turning off the engine and lights, he exited the Grand Prix and saw a

¹ Victoria Kaminski was also charged with unlawful possession of a controlled substance. She also filed a motion to quash her arrest and suppress evidence, which was also granted. The hearing on both motions were held concurrently. Following appeal by the State, this court affirmed the trial court's granting of her motion to quash and suppress. *People v. Victoria Kaminski*, 3--08--1040 (February 1, 2010) (unpublished pursuant to Supreme Court Rule 23).

police car parked directly behind him. The police car was so close that he could not have backed up if he had wanted to. As the defendant approached the store on foot, a police officer told him to get back inside his vehicle. He obeyed and got back into the Grand Prix "right away." A few seconds later, the officer approached the car and knocked on the driver's window. The defendant rolled down the window and the officer asked if "everything was okay." Martinez said "yes" and explained that he was going inside the store to buy some milk. The officer then asked him for identification. The defendant provided his brother's name, Efrain Martinez, and birth date because his driver's license was revoked.

¶ 5 The officer went to his squad car, returned after three to five minutes, ordered the defendant out of the Grand Prix and searched him. A female officer ordered Kaminski out of the front passenger's door and searched her as well. The defendant denied having passed anything to Kaminski while they were inside the car. Following his arrest, however, he wrote a statement admitting that he passed a bag of cocaine to Kaminski. He testified that he "took the rap" for Kaminski because she already had a pending forgery charge and because the officer said he would be released if he made a self-incriminating statement.

¶ 6 Daniel Troike, a Will County sheriff's deputy, testified that on September 25, 2006, at about 12:13 a.m., he saw a vehicle that appeared to be coasting "in the drive," or entrance, of the Gas City station with its headlights off. It was dark outside, and the parking lot had artificial lighting. The vehicle pulled into the lot and parked legally, although it straddled a yellow line. On direct examination, Troike testified:

"A. The vehicle pulled up on the south side of the gas -- the gas station.

I pulled behind it, and I attempted to radio my location to our dispatchers.

Q. Okay. And what happened next when you did that?

A. As I was attempting to radio my -- my radio traffic, the male driver in the vehicle [Martinez] attempted to exit the vehicle and approach me.

* * *

Q. Okay. And what was the purpose of your radio communication at that point?

A. To advise our dispatchers that I was -- what we call a motorist assist.

* * *

Q. All right. You ordered the driver back into the vehicle, correct?

A. That's correct.

Q. And what happens next?

A. I completed my radio communication, and I exited my vehicle and approached the driver's side of that vehicle."

¶ 7 Moreover, there were no other vehicles parked in the area, and Troike admitted that his squad car blocked the Grand Prix from backing up "very far." He had not observed a violation of any traffic law.

¶ 8 Troike testified that as he approached the Grand Prix on foot, he observed the defendant "taking an object" with his right hand and "sliding it in the direction of the passenger." He also saw Kaminski "retrieve" something from the defendant and place it in her waistband. Troike "asked [the defendant] if everything was okay, at which time, he stated yes." Troike did not ask about the object that was passed between the defendant and Kaminski, but he testified that he

was concerned for his safety. Neither the defendant nor Kaminski made any threatening statements or gestures. Troike asked the defendant to "produce identification *** to determine who he was." The defendant gave a name other than his own and a date of birth, 1974, that did not comport with his stated age.

¶ 9 Troike returned to his squad car and ran the name through the Illinois Secretary of State computer system, which revealed "no record on file." Troike then radioed for a female officer, Deputy Prybell, because of the "information" the defendant provided and because he wanted Kaminski searched for the object the defendant passed to her. Department policy forbade officers to search individuals of the opposite sex. Prybell arrived within two to three minutes and searched Kaminski, finding narcotics in the waistband of her pants along with a driver's license and insurance card in the defendant's name. Troike placed Kaminski under arrest, ordered the defendant out of the car, searched him and arrested him also. Troike then entered the defendant's information into the computer system and learned that his driver's license was revoked.

¶ 10 Deputy Prybell testified that she heard Troike's radio conversation with dispatch and began driving to the Gas City station before Troike called for her assistance. She stated:

"When he [Troike] initially stopped the vehicle, the license plates on the vehicle at the time came back to Ms. Kaminski, whose driver's license was suspended. So, dispatch notified him that the attached driver's license information for the car was suspended, so I immediately began -- he was in my zone, so I immediately started heading that way any way."

When Prybell arrived at the scene, Troike told her about the object in Kaminski's waistband and asked her to conduct a pat-down search. Prybell removed Kaminski from the vehicle and

conducted the search, feeling a rock-like substance beneath her clothing in the groin area. Prybell testified that she "knew exactly what it was," even though she could not see it. She handcuffed Kaminski for safety and then removed a plastic baggie, which contained a "chunky," rock-like substance having the appearance of crack cocaine. She also removed a "plastic-type envelope" containing the defendant's insurance card.

¶ 11 The defendant was recalled and testified that the rear windshield and all four side windows of the Grand Prix were tinted.

¶ 12 Following this testimony, the judge heard arguments and took the matter under advisement pending: (1) preparation of a transcript of Deputy Troike's testimony; and (2) submission of authority on the community caretaking doctrine. On November 26, 2008, the judge granted the defendant's motion to quash his arrest and suppress evidence, stating:

"I have had a chance to look at the transcripts of Officer Troike. He was pretty clear that the defendant [Martinez] was the operator of the vehicle, and when he saw the vehicle, it was in the driveway of the Gas City without the lights on. It was parked on the side as opposed to in front of the building. He didn't state anything suspicious about that at all. Even though he didn't park perfectly in a parking spot, I believe that's happened to everybody. The officer pulled up behind him. He said it was for a motorist assist, but he pulled up behind him and blocked him and ordered him back in his vehicle. When he got out of his car, I think that was a seizure right at that point. You have no probable cause. I'm going to grant the motion."

The State filed a certificate of impairment and notice of appeal from this ruling.

¶ 13

STANDARD OF REVIEW

¶ 14 When reviewing a ruling on a motion to quash arrest and suppress evidence, we will not reverse the circuit court's factual findings and credibility determinations unless they are against the manifest weight of the evidence. *People v. McDonough*, 239 Ill. 2d at 265-66. However, we will review *de novo* the ultimate question of whether suppression is warranted. *Id.* at 266.

¶ 15

DISCUSSION

¶ 16 The State claims that Deputy Troike's encounter with the defendant was justified as community caretaking, or alternatively, as a *Terry* stop.

¶ 17

1. Community Caretaking

¶ 18 "Courts use the term 'community caretaking' to uphold searches or seizures under the fourth amendment when police are performing some function other than investigating the violation of a criminal statute." *People v. Luedemann*, 222 Ill. 2d 530, 546 (2006). In other words, "rather than describing a tier of police-citizen encounter," community caretaking "refers to a capacity in which the police act when they are *performing some task unrelated to the investigation of crime.*" (Emphasis added.) *Luedemann*, 222 Ill. 2d at 545. Ordinarily the task is to check on an individual's well-being. See, e.g., *People v. Robinson*, 368 Ill. App. 3d 963, 973 (2006) (officer's actions in tapping on a window and attempting to engage the defendant in conversation were totally divorced from the detection, investigation, or acquisition of evidence where the officer saw the defendant apparently unconscious and slumped over the steering wheel of a vehicle with a running motor).

¶ 19 There are two general criteria that must be present for a valid community caretaking function to permit a valid warrantless search or seizure. *McDonough*, 239 Ill. 2d at 272. First,

the law enforcement officer must be performing some function other than investigating a crime. In making this determination, a court views the officer's actions objectively. *Id.* Second, the search or seizure must be reasonable in that it was undertaken to protect the safety of the general public. *Id.* Reasonableness is measured in objective terms by examining the totality of the circumstances, and the court must "balance a citizen's interest in going about his or her business free from police interference against the public's interest in having police officers perform services in addition to strictly law enforcement. *McDonough*, 239 Ill. 2d at 272.

¶ 20 In *McDonough*, a state trooper observed a vehicle with no visible head lights or tail lights, parked on the shoulder of a busy four-lane highway. Nothing other than the car's position on the shoulder of a busy highway without external lights motivated the officer to inquire as to whether the occupants needed assistance. *McDonough*, 239 Ill. 2d at 272. The officer parked immediately behind the parked car and activated his overhead emergency lights. The trooper testified that he activated his emergency lights for safety reasons. The ensuing encounter between the trooper and the driver of the vehicle lead to the driver's arrest for driving under the influence of alcohol. *Id.* Applying the first community caretaking requirement, the supreme court determined that the officer's initial encounter with the defendant was unrelated to the investigation of a crime since, viewing the facts in an objective manner, it was reasonable for the officer to render assistance to an apparently disabled vehicle parked on the shoulder of a busy highway. *McDonough*, 239 Ill. 2d at 273. As to the second requirement, the court found, based upon an objective analysis of the facts and circumstances, that it was reasonable for the officer to approach a vehicle to render "assistance to motorists who may be stranded on the side of a

highway, especially after dark and in areas where assistance may not be [otherwise] close at hand." *Id.*

¶ 21 The facts here are substantially different from those in *McDonough*, such that it was objectively unreasonable for Deputy Troike to approach the defendant's vehicle as he did -- positioning his squad car to block the defendant's vehicle while it was legally parked in the parking lot of a well-lighted gas station during a period of time when the station was opened for business. There were no objective facts to establish that the public safety was endangered by the defendant's parking in the well-lighted parking lot of a commercial establishment during business hours. Blocking the defendant's exit in this manner was clearly inconsistent with a community caretaking function. Even more inconsistent with a community caretaking function was the fact that the deputy ordered the defendant back into his car once he had exited the car. This prevented the defendant from going into the store or doing whatever else he originally planned to do as he entered the gas station parking lot. Blocking the defendant's car and ordering him back into the car were logically inconsistent with the community caretaking function of rendering assistance to motorist.

¶ 22 In point of fact, the only objective fact that led to Deputy Troike's decision to engage the defendant was the fact that the car appeared to coast into the gas station parking lot without any external lights. While this fact may have lead the deputy to investigate the cause for the defendant's actions, it was not objectively reasonable to conclude that the officer was engaged in community caretaking when he followed the defendant into the parking lot and blocked his exit. There was no indication in the record that the defendant's car, positioned where it was in the parking lot of a gas station open for business, posed any danger to public safety, nor were any

objective facts present to indicate that the driver was in need of a police officer's assistance in the parking lot of the gas station. Accordingly, the community-caretaking doctrine, as explained by the holding in *McDonough*, does not apply.

¶ 23

2. Reasonable Suspicion

¶ 24 Regarding the State's second argument, that Deputy Troike had a reasonable and articulable suspicion of criminal activity, we see no grounds to reverse the judge's ruling. The fourth amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. This guarantee applies to the states through the fourteenth amendment. *Elkins v. United States*, 364 U.S. 206, 4 L. Ed. 2d 1669, 80 S. Ct. 1437 (1960). A seizure occurs when "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *United States v. Mendenhall*, 446 U.S. 544, 554, 64 L. Ed. 2d 497, 509, 100 S. Ct. 1870, 1877 (1980). To justify a stop, an officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." *Terry v. Ohio*, 392 U.S. 1, 21, 20 L. Ed. 2d 889, 906, 88 S. Ct. 1868, 1880 (1968). A mere hunch of criminal activity is insufficient to justify a *Terry* stop. *People v. Thomas*, 198 Ill. 2d 103, 110 (2001). The situation must be so extraordinary that any competent officer would be expected to act quickly. *Thomas*, 198 Ill. 2d at 110.

¶ 25 Deputy Troike testified that he saw the Grand Prix pull into the gas station with its headlights off but, according to the defendant's testimony, he did not turn the headlights off until the Grand Prix was parked. Troike parked his police car in a manner that blocked the Grand Prix from backing out and, when the defendant stepped out of the car, Troike ordered him to get back

inside. A seizure undoubtedly occurred at that point. Yet, according to Troike's own testimony, he had not observed any traffic infractions. Neither, in our view, had he observed anything giving rise to a reasonable and articulable suspicion of criminal activity. The facts support a finding that he was acting on a hunch at the time of the seizure. Nothing he had seen qualified as being so extraordinary that any competent officer would be expected to act quickly.

¶ 26

CONCLUSION

¶ 27 For the foregoing reasons, and after considering the matter in light of *McDonough*, we affirm the judgment of the Will County circuit court.

¶ 28 Affirmed.