No. 2—09—0477
Order filed May 9, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 07—CF—2837
TERRY N. HEAP,	)	Honorable Allen M. Anderson,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

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 denying defendant's motion to quash his arrest and suppress evidence. Where the police officer observed defendant's vehicle on the shoulder of the road with a female walking away from it, but no evidence of criminal activity, the officer's decision to inquire if the individuals required assistance by pulling up his squad car behind defendant's vehicle and activating his emergency lights constituted a reasonable seizure under the fourth amendment. The exclusionary rule does not apply.

Following a bench trial, defendant, Terry N. Heap, was found guilty of aggravated driving under the influence of alcohol (625 ILCS 5/11—501(a)(2), (d)(1) (West 2006)). Prior to trial,

defendant moved to quash his arrest and suppress evidence. The trial court denied defendant's motion, and, on July 15, 2010, this court affirmed the trial court's ruling. See *People v. Heap*, No. 2—09—0477 (2010) (unpublished order under Supreme Court Rule 23). Defendant subsequently petitioned for leave to appeal to the 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.

I. BACKGROUND

At the hearing on defendant's motion, Montgomery police officer Jason Stransky testified that, at some time after midnight on July 21, 2007, while on patrol in a marked squad car, he observed a pickup truck parked on the shoulder of southbound Route 31. The truck's headlights were on. Stransky observed a female walking south away from the vehicle. She was walking about 5 to 10 feet ahead of the truck in a normal fashion and did not appear to be in distress or to need assistance. Stransky also observed an individual (later determined to be defendant) seated in the truck's driver's seat. Stransky, who had been proceeding north on Route 31, made a U-turn, activated his squad car's emergency lights, and pulled behind the truck. Stransky testified that he had no suspicion of any criminal activity. Rather, he pulled up behind the truck to conduct a "welfare check." He acknowledged that his written report concerning the incident made no mention of a welfare check. Asked whether he called for backup, Stransky replied, "When I saw the female walking away from the vehicle, I did ask for Officer Brown to make contact with the female." Stransky further testified:

> "[I]n my training and experience, seeing a vehicle parked on the side of the road, when people are walking away from that vehicle, you tend to—at nighttime, at that time you want to see if they're all right. Having car problems.
>
> In this particular case, I don't know what it is. I see a female walking from a vehicle, could be a domestic."

In denying defendant's motion, the trial court reasoned that, when Stransky pulled his squad car behind defendant's parked vehicle, he merely initiated a consensual encounter. The trial court concluded that the encounter did not rise to the level of a seizure merely because Stransky had activated his vehicle's emergency lights. Defendant appeals.

II. ANALYSIS

Defendant argues that the trial court erred in denying his motion to suppress. For the following reasons, we again reject defendant's argument.

In reviewing a court's ruling on a motion to suppress evidence, we will uphold the court's factual findings unless they are against the manifest weight of the evidence. *McDonough*, 239 Ill. 2d at 265-66. However, we review *de novo* the ultimate question whether the evidence should have been suppressed. *Id.* at 266.

The fourth amendment to the United States constitution protects people against unreasonable searches and seizures. U.S. Const., amend. IV; see also *People v. Johnson*, 237 Ill. 2d 81, 89 (2010). The stopping of a vehicle and the detaining of its occupants constitutes a seizure within the meaning of the fourth amendment, even if the stop is brief and for a limited purpose. *McDonough*, 239 Ill. 2d at 266. Thus, the stop must be reasonable in all the circumstances. *Id.* at 267.

Contrary to the trial court's assessment, we conclude that defendant was seized when Stransky pulled his squad car behind defendant's parked vehicle. For fourth amendment purposes, an individual is "seized" when an officer " 'by means of physical force or show of authority, has in some way restrained the liberty of a citizen.' " *Florida v. Bostick*, 501 U.S. 429, 434 (1991), quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968). The proper test of seizure under these circumstances is whether a reasonable innocent person in the defendant's position would have believed he or she was free to decline to answer the officer's question or otherwise terminate the encounter. See *People v. Luedemann*, 222 Ill. 2d 530, 550-51 (2006). Further, "[t]he analysis requires an objective evaluation of the police conduct in question and does not hinge upon the subjective perception of the person involved." *Id.* at 551.

In *People v. Laake*, 348 Ill. App. 3d 346 (2004), the court observed that:

> "We agree with [the defendant's] contention that a police officer's use of overhead emergency lights, when directed at a particular person, would be interpreted by that person as a command to stay put. This view accords with decisions from at least three other jurisdictions. See *State v. Morris*, 276 Kan. 11, 72 P.3d 570 (2003) (officers activated emergency lights behind a vehicle parked with its engine running on a rocky, jetty-breaker area of a lake); *State v. Donahue*, 251 Conn. 636, 742 A.2d 775 (1999) (officer activated flashers behind a vehicle that pulled into the parking lot of a closed business); and *State v. Burgess*, 163 Vt. 259, 657 A.2d 202 (1995) (officer activated emergency lights and approached a vehicle in a lawful 'pull-off area')." *Laake*, 348 Ill. App. 3d at 349-50.

See also 4 W. LaFave, Search and Seizure §9.4(a), at 433-35 (4th ed. Supp. 2010-2011) (although "the mere approaching and questioning of [persons seated in parked vehicles] does not constitute a

seizure," such encounter becomes a seizure when police engage in "action which one would not expect if the encounter was between two private citizens," such as the "use of flashing lights as a show of authority").

In *People v. Cash*, 396 Ill. App. 3d 931 (2009), law enforcement officials were maintaining surveillance on a Rockford home owned by Nicholas Castronovo. They had a warrant to search the home, but suspected that they might encounter violent opposition, so, they waited for Castronovo to leave. At some point, Castronovo left the home driving a Lincoln Town Car, and several officers followed the vehicle. The Town Car parked on a Rockford street, and the defendant joined Castronovo inside the vehicle. The officers then pulled up behind the Town Car and activated their lights and siren, ostensibly to let Castronovo know that they were behind him. Relying on *Laake*, this court held that the use of lights and siren was a command to stop or to stay put and, therefore, amounted to a seizure. *Cash*, 396 Ill. App. 3d at 941-42.

Here, the State contends that, "since [Stransky's] testimony was limited to his act of pulling up behind the defendant's car with his overhead lights activated," the record is insufficient to determine whether or not the encounter was consensual. The argument is meritless. Pursuant to *Laake* and *Cash*, defendant was seized at the moment Stransky pulled up behind him; whatever might have occurred thereafter could bear only on the *duration* of the seizure, not on whether a seizure occurred.

Having determined that a seizure occurred, we nonetheless affirm the denial of defendant's motion because we conclude that the seizure did not violate the fourth amendment. Although the State does not concede that defendant was seized when Stransky pulled up behind him, the State

argues that, if a seizure occurred, it was reasonable. We agree that, under the community caretaking doctrine (and pursuant to *McDonough*), the seizure was reasonable.

Community caretaking describes an exception to the warrant requirement and is invoked to validate a search or seizure as reasonable under the fourth amendment. *Luedemann*, 222 Ill. 2d at 546. It is not relevant to determining whether police conduct constituted a seizure in the first place. *Id.* at 548. Under the community-caretaking doctrine, courts "uphold searches or seizures under the fourth amendment when police are performing some function other than investigating the violation of a criminal statute." *Id.* at 546. It has been observed that "[w]hen a law enforcement officer initiates an encounter to check on an individual's well-being without the initial thought of criminal activity, the function is community caretaking." *People v. Damian*, 374 Ill. App. 3d 941, 945 (2007). Thus, there are two general criteria that must be present for a valid community-caretaking exception to the prohibition on warrantless searches or seizures. *McDonough*, 239 Ill. 2d at 272; *Luedemann*, 222 Ill. 2d at 546-47. First, the law enforcement officer must be performing some function other than investigating a crime. *Luedemann,* 222 Ill. 2d at 546. Second, the scope of the search must be reasonable because it was done to protect the safety of the public. *Id.* at 547. In assessing these criteria, courts view police actions objectively. *McDonough*, 239 Ill. 2d at 272.

In *McDonough*, a State trooper traveling in the northbound lanes in a busy four-lane highway observed a vehicle on the shoulder of the southbound lanes with its headlights off. The trooper did not observe anything unusual (*i.e.*, he had no " 'hunch' " about anything). *Id.* at 262. Deciding to inquire whether the occupants needed assistance, the trooper parked his squad car behind the vehicle and activated his own vehicle's overhead emergency lights. The trooper testified that he activated the lights for safety reasons (*i.e.*, it was dark and there was heavy traffic). The trooper's ensuing

encounter with the driver resulted in the driver being arrested for driving under the influence of alcohol.

On appeal, the State conceded that the defendant was seized when the trooper activated his emergency lights. Holding that the objective facts fell within the community-caretaking exception to the fourth amendment and, thus, rendering the assumed seizure reasonable, the supreme court upheld the appellate court's reversal of the trial court's suppression order. *McDonough*, 239 Ill. 2d at 274. Applying the first community-caretaking requirement, the supreme court concluded that the seizure was unrelated to the investigation of a crime because the trooper stopped the defendant's vehicle to offer aid and activated his emergency lights because it was dark and there was a lot of traffic. *Id.* at 273. As to the second requirement, the court concluded that the assumed seizure was undertaken to protect public safety. Based on the specific, objective facts, it was reasonable for the officer to approach the defendant's vehicle to offer aid. *Id.* Further, the court determined that it was objectively reasonable for the officer to activate his emergency lights for his own safety, defendant's safety, and passing traffic. *Id.* at 274. Thus, the court upheld the reversal of the trial court's suppression order, noting that, since there was no fourth amendment violation, the exclusionary rule did not apply. *Id.*

The facts here are similar to those in *McDonough*. Here, the officer observed a parked vehicle on the shoulder of a road and decided to inquire if the occupant and the female walking nearby were in need of assistance. The objective facts here, therefore, reflect that Stransky approached defendant's vehicle for a purpose unrelated to the investigation of a crime. Further, the objective facts show that it was reasonable for Stransky to approach defendant's vehicle as he did—pulling up

behind the truck and activating his emergency lights—because defendant's vehicle was parked on the shoulder and it was shortly after midnight and dark.

We recognize that " 'courts must be especially vigilant in guarding against subterfuge, that is, a false reliance upon the [personal safety or] property protection rationale when the real purpose was to seek out evidence of crime.' " *People v. Ray*, 981 P.2d 928, 937 (1999), quoting 3 W. LaFave, Search and Seizure §6.6(b), at 406 (3d ed. 1996). In this case, however, there is no reason to doubt that Stransky, having observed a pickup truck parked on the shoulder of Route 31, was genuinely concerned about the well-being of the driver and the woman walking along the road nearby. Indeed, for Stransky to have simply continued on his way without ascertaining whether the driver, the woman, or both were in need of assistance would have been irresponsible. See *McDonough*, 239 Ill. 2d at 274 (noting that "a law enforcement officer has the right to make a reasonable investigation of vehicles parked along roadways to offer such assistance as might be needed and to inquire into the physical condition of persons in vehicles").

Defendant argues that Stransky's police report, which made no mention of a "welfare check," belies Stransky's testimony that he initiated the encounter for that purpose. The omission is of little, if any, significance. Stransky may well have felt (and it is certainly objectively reasonable to infer from this record) that the reason he pulled up behind the pickup truck was obvious from the circumstances. Defendant also argues that, because Stransky testified that the incident could have been a domestic disturbance, Stransky's "true motivation *** was clearly to investigate possible criminal activity." The argument is unpersuasive. By virtue of defendant's reasoning, an officer would not be able to intervene in an incident involving a possible threat to public welfare or safety unless the officer either had reasonable suspicion that crime was afoot or, conversely, was practically

certain that no crime was taking place. Such a rule, which would hamstring police in ambiguous situations, is simply untenable.

III. CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

Affirmed.