



¶ 4 On February 27, 2011, at approximately 2:49 a.m., Deputy Chris McClenning of the Cass County sheriff's department was traveling westbound on Chandlerville Road when he passed defendant's vehicle traveling eastbound. Deputy McClenning observed defendant's vehicle, traveling at a "low rate of speed," turn onto North Bluff Springs Road. Defendant then turned into the Brick School parking lot, and Deputy McClenning turned his vehicle around and followed defendant into the parking lot. The school was located in a rural area, "with no houses around." He did not observe defendant commit any traffic violations.

¶ 5 When Deputy McClenning entered the parking lot, he pulled in "directly behind" defendant's parked vehicle. Deputy McClenning left his vehicle's headlights on, but he did not activate his overhead lights. Deputy McClenning approached defendant's vehicle and inquired as to why defendant had pulled into the parking lot. At that time, Deputy McClenning "detected the odor of an alcoholic beverage" and observed defendant had "bloodshot and glossy eyes." Deputy McClenning arrested defendant for DUI after she failed a field sobriety test.

¶ 6 Following her arrest, on May 12, 2011, defendant filed a petition to rescind statutory summary suspension. Defendant asserted Deputy McClenning did not have reasonable grounds to believe defendant was driving under the influence.

¶ 7 On June 9, 2011, the trial court held a hearing on defendant's petition. Deputy McClenning testified part of the reason he stopped was to see if defendant needed assistance or was lost. Deputy McClenning's report, filed with the court and admitted as evidence at the hearing, listed "check[ing] [on] a suspicious vehicle" as his reason for coming into contact with defendant. The court denied defendant's petition, finding Deputy McClenning was justified in "stopping and checking out the situation" under the community-caretaking function.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, defendant argues the trial court erred in denying her petition to rescind statutory summary suspension. Defendant argues she was improperly seized by police, and the seizure did not fall under the community-caretaking exception to the warrant requirement of the fourth amendment. The State argues defendant was not seized until after Deputy McClenning acquired reasonable suspicion necessary to detain defendant. In the alternative, the State argues any seizure of defendant was justified under the community-caretaking function. We agree with the State and affirm.

¶ 11 A. Standard of Review

¶ 12 On a hearing to rescind statutory summary suspension, defendant carries the burden of making a *prima facie* case for rescission. *People v. Kavanaugh*, 362 Ill. App. 3d 690, 695, 840 N.E.2d 807, 811 (2005). Once defendant has done so, the burden of presenting evidence to justify the suspension shifts to the State. *Kavanaugh*, 362 Ill. App. 3d at 695, 840 N.E.2d at 811. This court is deferential to the trial court's factual findings and will not reverse those findings unless they are against the manifest weight of the evidence. *People v. Wear*, 229 Ill. 2d 545, 561, 893 N.E.2d 631, 641 (2008). We are free to undertake our own assessment of the facts and draw our own conclusions, and thus, we ultimately review *de novo* the legal ruling on whether a petition to rescind should be granted. *Wear*, 229 Ill. 2d at 562, 893 N.E.2d at 641.

¶ 13 B. Was Defendant "Seized" and, If So, When?

¶ 14 The trial court denied defendant's petition to rescind statutory summary suspension because Deputy McClenning's seizure of defendant was justified under the

community-caretaking function. Before we address whether the community-caretaking function was applicable here, we must first determine if and when defendant was seized. See *People v. McDonough*, 239 Ill. 2d 260, 270, 940 N.E.2d 1100, 1107 (2010) (whether a defendant was seized is " 'analytically distinct' " from whether the community-caretaking doctrine applies, as the doctrine is employed to justify a seizure under the fourth amendment).

¶ 15 The State argues defendant was not seized until after Deputy McClenning had obtained reasonable suspicion defendant was driving under the influence. The State argues the seizure was a legitimate fourth amendment seizure supported by reasonable suspicion, and this court can affirm the trial court's order without the need to invoke the community-caretaking doctrine. Defendant contends the State did not present this argument to the trial court, and the court did not rely on such an argument in denying defendant's petition. Thus, defendant posits, the State cannot now present such an argument to this court. In response, the State contends it is not limited to making arguments on appeal based solely on the trial court's rationale and this court may affirm the trial court's order on any basis established by the record. We agree with the State. See *People v. Calhoun*, 382 Ill. App. 3d 1140, 1146, 889 N.E.2d 795, 800 (2008); *People v. Reed*, 298 Ill. App. 3d 285, 295, 698 N.E.2d 620, 628 (1998).

¶ 16 Our supreme court has made it clear "not every encounter between the police and a private citizen results in a seizure." *McDonough*, 239 Ill. 2d at 268, 940 N.E.2d at 1106. A seizure does not occur solely by an officer approaching and questioning a person in a parked vehicle. *People v. Luedemann*, 222 Ill. 2d 530, 552, 857 N.E.2d 187, 201 (2006). Rather, for purposes of the fourth amendment, a person in a parked vehicle is "seized" if a reasonable innocent person in defendant's position would have believed she was not " 'free to decline the

officer's requests or otherwise terminate the encounter.' " *Luedemann*, 222 Ill. 2d at 550, 857 N.E.2d at 200 (quoting *Florida v. Bostick*, 501 U.S. 429, 436 (1991)). This test consists of an "objective evaluation of the police conduct in question and does not hinge upon the subjective perception" of defendant. *Luedemann*, 222 Ill. 2d at 551, 857 N.E.2d at 200; see also *McDonough*, 239 Ill. 2d at 271 n.1, 940 N.E.2d at 1108 n.1.

¶ 17 The United States Supreme Court has enumerated, and our supreme court has adopted, factors that may denote a seizure: "(1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) some physical touching of the person of the citizen; and (4) the use of language or tone of voice indicating that compliance with the officer's request might be compelled." *Luedemann*, 222 Ill. 2d at 553, 857 N.E.2d at 201 (citing *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)). These factors are not exhaustive and Illinois courts have often considered additional factors in determining whether a seizure of a parked vehicle has occurred. *Luedemann*, 222 Ill. 2d at 554, 857 N.E.2d at 202. These include (1) "boxing the car in," (2) approaching the vehicle on all sides by multiple officers, (3) pointing a gun at the vehicle's occupant and ordering her to place her hands on the steering wheel, or (4) the use of overhead lights as a show of authority. *Luedemann*, 222 Ill. 2d at 557, 857 N.E.2d at 204.

¶ 18 Here, the record indicates none of the factors outlined in *Mendenhall* were present. Deputy McClenning was the only officer to approach defendant's vehicle. The record does not show Deputy McClenning displayed a weapon or touched defendant. Nothing in the record suggests Deputy McClenning's tone of voice compelled compliance with his orders. Deputy McClenning's only communication with defendant before he observed her intoxicated state was an inquiry into why she had pulled into a rural school parking lot at 2:49 a.m. This type

of questioning is not the use of language compelling compliance to which the Supreme Court referred in *Mendenhall*.

¶ 19 We also do not find the *Luedemann* factors indicate defendant was seized. Defendant argues she was "boxed in," preventing her from driving away from the scene, because Deputy McClenning parked "directly behind" her car. Defendant cites multiple cases stating blocking cars in their parking spots is coercive and indicative of a seizure. However, the record does not definitely establish that defendant was "boxed in." Deputy McClenning testified he parked "directly behind" defendant's car. The record does not show whether defendant parked in the middle of the parking lot, leaving a space open to her left, right, and front, which would have allowed her to drive away; or whether defendant parked up against a parking block, leaving only the space to the left or right open, with Deputy McClenning parked directly behind her. The trial court made no finding on whether defendant was in fact "boxed in."

¶ 20 Although it is unclear from the record whether defendant was boxed in, the record does show the remaining *Luedemann* factors were not present. Defendant was not approached by multiple officers on all sides of her vehicle. Deputy McClenning was the only officer to approach defendant's vehicle and did so on the driver's side. Deputy McClenning also testified he did not activate his overhead lights. Defendant argues Deputy McClenning created the perception defendant was "under official scrutiny" and increased the overall coercive nature of the stop when he left his headlights shining directly upon her vehicle as he pulled in behind her. Leaving headlights on is not indicative of a seizure. It would be unreasonable to expect the deputy to turn off his headlights and exit his vehicle at 2:49 a.m. in the middle of a rural area where there is likely limited lighting. See *Luedemann*, 222 Ill. 2d at 561-62, 857 N.E.2d at 206

(citing cases for the conclusion that "the use of a flashlight or spotlight [to illuminate a vehicle at night], without other coercive behavior, is insufficient to transform a consensual encounter into a seizure"). The record does not show Deputy McClenning pointed a gun at defendant or requested her to place her hands on the steering wheel.

¶ 21 Applying the factors enumerated in *Mendenhall* and *Luedemann*, we conclude Deputy McClenning did not "seize" defendant for fourth amendment purposes when he initially approached her vehicle. Deputy McClenning seized defendant after he spoke with her and had reasonable suspicion of DUI, following his observation of defendant's bloodshot eyes and the odor of alcohol emanating from the vehicle.

¶ 22 C. Community-Caretaking Exception Would Otherwise Apply

¶ 23 Although we may affirm the trial court's denial of defendant's petition to rescind statutory summary suspension on this basis because it is supported by the record (*McDonough*, 239 Ill. 2d at 275, 940 N.E.2d at 1110), we choose to address whether the community-caretaking doctrine applies since the court denied defendant's petition on that basis. Such an analysis would presuppose Deputy McClenning seized defendant prior to speaking with her and observing signs of DUI. Even though we have concluded defendant was not seized when Deputy McClenning initially pulled in behind and approached defendant's vehicle, our analysis will assume to the contrary, as the community-caretaking doctrine requires a seizure under the fourth amendment before the exception can apply.

¶ 24 For the community-caretaking exception to the fourth amendment to apply, the trial court must find the police officer was performing a function other than the investigation of a crime. *McDonough*, 239 Ill. 2d at 272, 940 N.E.2d at 1109. "In making this determination, a

court views the officer's actions objectively." *McDonough*, 239 Ill. 2d at 272, 940 N.E.2d at 1109; see also *Whren v. United States*, 517 U.S. 806, 813 (1996) (rejecting "any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved"). The second criteria of the community-caretaking function is the search or seizure was reasonable "because it was undertaken to protect the safety of the general public." *McDonough*, 239 Ill. 2d at 272, 940 N.E.2d at 1109. The reasonableness of the search or seizure is determined by an objective examination of the totality of the circumstances. *McDonough*, 239 Ill. 2d at 272, 940 N.E.2d at 1109. In deciding whether this exception applies, the trial court is required to balance the citizen's interest in remaining free from police interference against the public's interest in enabling police to perform services in addition to law enforcement. *McDonough*, 239 Ill. 2d at 272, 940 N.E.2d at 1109.

¶ 25 Defendant argues the seizure was not justified under the community-caretaking function because Deputy McClenning was engaged in the investigation of criminal activity. Defendant alleges Deputy McClenning was engaged in a criminal investigation because (1) his police report stated he "checked on a suspicious vehicle [he] observed pull into a parking lot" and (2) during his cross-examination, Deputy McClenning admitted he was investigating whether a crime was about to be committed. Defendant's conclusion is misguided as she focuses on the subjective rationale of Deputy McClenning. The relevant determination views the officer's actions objectively. Moreover, if Deputy McClenning's subjective views were relevant, they would support the conclusion he was performing a community-caretaking function, as he testified he was concerned defendant was lost or needed assistance.

¶ 26 An objective analysis of Deputy McClenning's actions shows defendant's seizure

was unrelated to the investigation of a crime. Deputy McClenning witnessed defendant driving "at a low rate of speed" and pull into a school parking lot, at 2:49 a.m., in a rural area where there were "no houses around." These actions could prompt an officer to have a genuine concern for the welfare of the occupant of the vehicle. We conclude the police conduct in question was not "so lacking an objectively grounded public safety purpose that the officer could not be 'performing some function other than the investigation of a crime.'" *People v. Dittmar*, 2011 IL App (2d) 091112, ¶ 26, 954 N.E.2d 263, 271 (citing *McDonough*, 239 Ill. 2d at 272, 940 N.E.2d at 1109).

¶ 27 The State also notes no evidence shows defendant committed a traffic violation or broke any other law when Deputy McClenning pulled in behind and approached defendant's vehicle. This supports the conclusion Deputy McClenning was not investigating a crime when he encountered defendant in the parking lot.

¶ 28 An objective examination of the totality of the circumstances leads us to conclude the seizure was reasonable because it was undertaken to protect the safety of the general public.

As our supreme court stated in *McDonough*,

"[i]n the proper performance of his or her duties, 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. The occupant of a parked vehicle may be intoxicated, suffering from sudden illness, or may be only asleep. Under these circumstances, it is within a reasonable law

enforcement officer's authority to determine whether assistance is needed." *McDonough*, 239 Ill. 2d at 273, 940 N.E.2d at 1110.

Defendant argues the above doctrine should not apply to vehicles parked in parking lots because such situations are not inherently dangerous as parking alongside the road may be, and it cannot be assumed passengers in such vehicles require assistance. In some situations a vehicle parked in a parking lot would not reflect the same level of concern, or signify the same need for assistance, as that of a car on the side of the road or highway. However, this is not one of those situations.

¶ 29 Defendant was parked in a school parking lot at 2:49 a.m. We can safely assume the school was not open and defendant did not have a reason associated with the school to be parked in its parking lot. Defendant had been driving slowly, in a rural area where there were "no houses around." Under these circumstances, it was objectively reasonable for Deputy McClenning to investigate whether defendant was lost, needed assistance, or was in some sort of trouble. We conclude Deputy McClenning was performing a community-caretaking function when he stopped and approached defendant's vehicle, and thus any seizure under these circumstances was justified.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the trial court's judgment.

¶ 32 Affirmed.