

No. 1-12-2498

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County, Illinois.
Plaintiff-Appellee,)	
)	
v.)	No. TW 125550
)	
MICHAEL CAMPOS,)	
)	Honorable Regina Scannicchio,
Defendant-Appellant.)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Harris and Justice Liu concurred in the judgment.

ORDER

- ¶ 1 *HELD:* Trial court properly granted motion to suppress where evidence revealed police officers were investigating suspect DUI call and activated emergency lights when they parked, exited vehicle, and approached defendant who did not feel free to leave before he was arrested. Where evidence showed police were investigating suspect DUI call when they stopped defendant and arrested him for DUI, they were investigating a crime and the community caretaker exception to fourth amendment seizure protections did not apply.
- ¶ 2 On August 27, 2011, defendant was arrested and charged with driving under the influence, (625 ILCS 5/11-501(a)(2) (West 2010)), as well as failure to keep in lanes and striking an unattended vehicle. Defendant moved to quash his arrest and suppress evidence, alleging that the

Chicago police officers unlawfully detained him and lacked probable cause for his arrest.

Following briefing and a hearing, the trial court granted defendant's motion and subsequently denied the State's motion to reconsider.

¶ 3 The State filed a certificate of substantial impairment pursuant to Rule 604(a) (Ill. S. Ct. R. 604(a) (eff. July 1, 2006)) and this appeal followed. On appeal, the State contends that the trial court erred in determining that a seizure occurred and the suppression of evidence was improper. The State also argues the trial court erred in rejecting its argument that the officer's actions were justified under the community caretaking exception to the fourth amendment warrant requirement. For the following reasons, we affirm the judgment of the trial court.

¶ 4 I. BACKGROUND

¶ 5 At the suppression hearing, Officer William Murphy of the Chicago police department testified that on August 27, 2011, he and his partner, Officer Christopher Bacek, were in a marked squad car when they received a call from dispatch around 4:30 a.m. about a "possible DUI driver." In response to the call, the officers proceeded west toward 257 West 26th Street. When the officers reached this area, they observed defendant standing in the street by a white Dodge Ram truck with no one else in the area. Murphy testified that the officers stopped their squad car in the vicinity of defendant and his vehicle, but did not block in defendant. Murphy could not recall if the squad car's emergency lights were activated.

¶ 6 The officers exited the squad car and approached defendant to ask him questions about the emergency call of a suspicious DUI driver in the area. Murphy did not have his gun drawn when he approached defendant. He testified that he soon discovered that the vehicle parked nearby defendant was missing the right front passenger tire. Murphy testified that he had not witnessed defendant violate any laws and that he was "free to leave" if he wanted to at that time. However,

Murphy admitted that if defendant had tried to leave, the officers would have stopped him as they were there on a call of a suspicious DUI driver and the car was missing a tire.

¶ 7 Bacek testified consistently with Murphy's testimony. He denied that he was trained to activate his emergency lights when stopping in a street, stating that was a discretionary decision. Bacek could not recall if the officers had activated their lights that morning. Bacek did not unholster his weapon or tell the defendant to stay where he was or not to move.

¶ 8 Bacek admitted that the officers were conducting a "field interview," or "investigation regarding a DUI driver." Bacek also did not personally see defendant commit any criminal activity. When the officers approached defendant, Bacek observed that defendant's vehicle was missing a tire and he detected signs that defendant was intoxicated. Bacek testified that if defendant wanted to leave he could have and he would have had to make the decision whether to pursue him at that time.

¶ 9 Defendant testified that the lights on the squad car were on. He testified that he did not feel free to leave when the officers approached. More specifically, he testified that he did not feel like the officers would let him leave and that he "didn't feel good to walk away from them, just to walk away" when they approached. He testified that the officers did not have their guns drawn at any time. Defendant could not recall if he was told not to move by the officers.

¶ 10 Following argument, the trial court granted defendant's motion to quash arrest and suppress evidence. First, the court found that the evidence presented did not support the State's position that the community caretaking exception applied to this case. The court noted that there was no evidence from the police of the manner of their approach or whether they activated their lights for their safety or the safety of others.

¶ 11 The court found there was no evidence that defendant was blocked in by the police and the police credibly testified that they would not have stopped defendant if he had attempted to leave. However, defendant testified that he did not feel free to leave. Because the police had activated their emergency lights, a reasonable person would not feel free to decline the encounter with the officers and "few if any reasonable citizens while parked would simply drive away and assume the police in turning on their emergency flashers would be communicating something other for them to remain." Furthermore, based on the dispatch call, it was unreasonable to believe the officers would have simply allowed defendant to leave. The court granted the motion to quash and suppress. The State filed a motion to reconsider and the court denied that motion. This appeal followed.

¶ 12

II. ANALYSIS

¶ 13 As noted above, the State filed a certificate of substantial impairment pursuant to Rule 604(a) and brought this appeal. The State raises two issues on appeal. First, the State contends that the trial court erred in determining that a seizure occurred and its decision quashing defendant's arrest and suppressing evidence should be reversed. Second, the State argues that the trial court erred in rejecting its argument that the officer's actions were justified under the community caretaking exception to the fourth amendment warrant requirement.

¶ 14 We follow a two-part standard of review when considering a trial court's ruling on a motion to suppress evidence. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). Following this standard, we grant the trial court's findings of fact great deference under the manifest weight of the evidence standard, though we may undertake our own assessment of the facts in relation to the issues presented and draw our own conclusions when deciding proper relief. *Id.* The trial court's ultimate legal ruling is reviewed *de novo*. *Id.*

¶ 15 We begin by reviewing the three tiers of police-citizen encounters, what constitutes a seizure, and the community caretaking exception. The first tier of police-citizen encounters involves an arrest or detention of a citizen that must be supported by probable cause. *People v. McDonough*, 239 Ill. 2d 260, 268 (2010). The second tier involves an investigative stop pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968), where the police officer has a reasonable articulable suspicion of criminal activity that exceeds a mere hunch. *Id.* The third tier involves consensual encounters where there is no coercion or detention by the police officer and, therefore, the fourth amendment is not implicated. *Id.*

¶ 16 With respect to the trial court's findings on the law, under fourth amendment jurisprudence, an individual is "seized" when the individual's liberty has been restrained by means of a police officer's force or show of authority. *Luedemann*, 222 Ill. 2d at 550. This ultimately is determined by whether, under the circumstances, the individual felt "free to leave" or free to decline an officer's requests or terminate the encounter. *Id.* This is an objective evaluation that presupposes a reasonable, innocent person interacting with the police officer. *People v. Colquitt*, 2013 IL App (1st) 121138, ¶ 32.

¶ 17 The community caretaking exception refers to when the police are "performing some task unrelated to the investigation of crime, such as helping children find their parents, mediating noise disputes, responding to calls about missing persons or sick neighbors, or helping inebriates find their way home." *Luedemann*, 222 Ill. 2d at 269. Therefore, the courts have carved out this exception as reasonable under the fourth amendment because "the police are performing some function other than investigating the violation of a criminal statute." *Id.* As such, the *Luedemann* court set two general criteria to determine whether the community caretaker exception applies: (1) "law enforcement officers must be performing some function other than the

investigation of a crime" and (2) "the search or seizure must be reasonable because it was undertaken to protect the safety of the general public." *Luedemann* at 545-46.

¶ 18 As defendant points out, there is no dispute from the testimony at the hearing that the officers were conducting an investigation regarding a suspect DUI driver, a violation of a criminal statute, when they stopped and approached defendant. Accordingly, under *Luedemann*, the community caretaking exception does not apply in this case. The trial court properly rejected the State's argument on this issue.

¶ 19 The State's main argument is that the trial court erred in finding that defendant was stopped when the officers pulled up and stopped with their emergency lights activated. The State first contends that the facts presented are insufficient to support the trial court's inference that the emergency lights were activated. Assuming *arguendo* that the squad car's lights were activated, the State argues that alone does not support a finding that there was a seizure. The State adds that there was no evidence of coercive behavior by the officers toward defendant or that the officers obstructed defendant's way or forbade him from leaving to support a finding that there was an illegal seizure.

¶ 20 We do not agree with the State's view of the facts in this case. As noted above, the trial court's findings of fact will be given deference and reversed only if against the manifest weight of the evidence. The police officers did not observe any damage to defendant's vehicle or signs of intoxication until they exited the squad car and approached defendant. Defendant simply stated that the squad car's lights were on. The State argues this does not prove that the emergency lights were on; however, we do not think this testimony renders the trial courts finding of fact against the manifest weight of the evidence.

¶ 21 The question of whether merely activating emergency lights, either alone or combined with other law enforcement actions, constitutes a seizure for fourth amendment procedures has been discussed by our courts; however, there is no definitive answer in the case law. *McDonough*, 239 Ill. 2d at 271. In *People v. Daniel*, 213 IL App (1st) 111876, a seizure occurred when the police officer activated his emergency lights and siren, and forced a moving vehicle to the curb. In *People v. Smulik*, which the trial court relied on, the defendant was seized when the police officer pulled in behind the defendant's parked vehicle with her emergency lights activated. 2012 IL App (2d) 110110, ¶ 6. Conversely, in *Colquitt*, there was no seizure for fourth amendment purposes where the police officer activated the emergency lights and siren to perform a U-turn across four lanes of traffic, before deactivating them and parking behind the defendant who was parked in the right lane without his hazard lights activated. *Colquitt*, 2013 IL App (1st) 121138, ¶ 38-40.

¶ 22 The State argues that *Colquitt* is controlling and supports reversal of the trial court's order. Defendant did not address *Colquitt* in his brief. However, based on the facts and testimony of this case, we agree that the trial court did not err in granting defendant's motion. In *Colquitt*, this court concluded that the police officer's "brief activation of his emergency lights and siren, as he crossed over four lanes of traffic at night to make a U-turn, was necessitated, as the trial court observed, by safety concerns and did not, by itself constitute a seizure," *Id.* at ¶ 41. Unlike in *Colquitt*, the officers in this case did not deactivate their lights when they approached defendant. More importantly, the trial court in the instant matter noted that neither police officer testified that the emergency lights were activated for safety concerns for themselves or any other citizens or that the police department policies required such an action.

¶ 23 This case involved a scenario closer to that in *Smulik*. Defendant was standing in the street by a parked car, the police officers were investigating a report of criminal activity, the

officers did not identify any issue with defendant's vehicle, they activated their emergency lights and exited their vehicle, and they only identified evidence of defendant's crime as they approached him. In addition, standing in the street, defendant was not in a moving vehicle or prohibiting a consensual encounter by the officers.

¶ 24 There was no evidence that the emergency lights were activated as a safety precaution and the trial court concluded that a reasonable person would conclude, as defendant testified, that if standing in the street and two police officers approached after turning on their emergency lights, that he was not free to leave. Furthermore, as the trial court concluded, based on the dispatch report, it was not reasonable to believe the officers would have allowed defendant to leave. In fact, Officer Murphy testified that if defendant had attempted to leave he would have stopped him while Officer Bacek only testified that he would have had to make that decision at that time. Considering the facts of this case, the trial court order granting defendant's motion is affirmed.

¶ 25

III. CONCLUSION

¶ 26 For the foregoing reasons we affirm the judgment of the circuit court.

¶ 27 Affirmed.