IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE,	:	
	:	I.D. No. 1110010458
v.	:	
	:	
JAIME C. NEGRON,	:	
	:	
Defendant.	:	

Submitted: May 15, 2012
Decided: June 28, 2012

ORDER

Upon Defendant's Motion to Suppress.
Denied.

Kathleen A. Dickerson, Esquire, Department of Justice, Dover, Delaware; attorney for the State.

Eric G. Mooney, Esquire of Mooney & Nutter, P.A., Georgetown, Delaware; attorney for the Defendant.

WITHAM, R.J.

FACTS

At 3:12 A.M. on Saturday, October 15, 2011, Patrolman Byron Stubbs (hereinafter "Patrolman Stubbs") and Field Training Officer Perna (hereinafter "FTO Perna"),[1] both of the Harrington Police Department, were on patrol in the area of Carpenter Bridge Road and Route 13. While proceeding northbound, the two observed a silver Dodge Ram pickup truck at the Valero gas station adjacent to Route 13. Patrolman Stubbs testified that he and FTO Perna made the decision to turn around and investigate the truck.

After making two U-turns, the Officers entered the gas station parking lot and pulled alongside the pickup. Patrolman Stubbs stated that he observed the driver with his seatbelt on and his head tilted back, and he appeared to be sleeping or unconscious. At the direction of FTO Perna, Patrolman Stubbs put the patrol car in reverse, maneuvered it behind the pickup, and activated the car's emergency lights. Patrolman Stubbs advised Kent Comm of the Officers' location and that they were stopping a suspicious vehicle. Patrolman Stubbs also testified that upon seeing the man asleep or unconscious he became concerned for the man's safety.

The driver of the vehicle, Jaime C. Negron (hereinafter "Defendant"), was subsequently charged with Driving a Vehicle While Under the Influence of Alcohol, pursuant to 21 *Del. C.* § 4177. Defendant moved to suppress evidence pertaining to his DUI charge obtained after the Officers activated the patrol car lights.

[1]FTO Perna's first name does not appear in the record. He did not testify at the hearing.

Standard of Review

The presumption that a warrantless seizure is unreasonable pursuant to the Fourth Amendment may be rebutted by demonstrating an applicable exception to the warrant requirement.[2] Under the Delaware Constitution, "Only when the totality of the circumstances demonstrates that the police officer's actions would cause a reasonable person to believe he was not free to ignore the police presence does a consensual encounter become a seizure."[3] A substantial number of Delaware cases have held that a seizure occurs when a police cruiser pulls up to a vehicle and activates its emergency flashers.[4] Generally, a police officer may detain a person "for investigatory purposes for a limited scope and duration, but only if such detention is supported by a reasonable and articulable suspicion of criminal activity."[5] A reasonable and articulable suspicion is defined as "'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant

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[2]*Williams v. State*, 962 A.2d 210, 216 (Del. 2008).

[3]*Id.* at 215-16 ("[W]e have declined to follow *Hodari* when enforcing the protection from illegal searches and seizures afforded by the Delaware Constitution.").

[4]*State v. Enos*, 2003 WL 549212, at *2-*3 (Del. Super. Feb 26, 2003); *State v. Clay*, 2002 WL1162300, at *2 (Del. Super. May 28, 2002); *State v. Caliph*, 2002 WL 338075, at *2 (Del. Super. Feb. 28, 2002); *State v. Roberts*, 2001 WL 34083579, at *2 (Del. Super. Sept. 27, 2001); *State v. Cannon*, 1997 WL 718646, at *3 (Del. Super. Aug. 7, 1997).

[5]*Jones v. State*, 745 A.2d 856, 861 (Del. 1999) (citing *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)).

th[e] intrusion.'"[6] "[R]easonable suspicion must be evaluated in the context of the totality of the circumstances as viewed through the eyes of a reasonable, trained police officer in the same or similar circumstances, combining objective facts with such an officer's subjective interpretation of those facts."[7]

In *Williams v. State*, the Delaware Supreme Court officially adopted the "community caretaker" doctrine.[8] The community caretaker doctrine has three elements as noted in *Williams* and reiterated in *Moore v. State*:

> First, if there are objective, specific and articulable facts from which an experienced officer would suspect that a citizen is in apparent peril, distress or need of assistance, the police officer may stop and investigate for the purpose of assisting the person. Second, if the citizen is in need of aid, then the officer may take appropriate action to render assistance or mitigate the peril. Third, once, however, the officer is assured that the citizen is not in peril or is no longer in need of assistance or that the peril has been mitigated, the caretaking function is over and any further detention constitutes an unreasonable seizure unless the officer has a warrant, or some exception to the warrant requirement applies, such as a reasonable, articulable suspicion of criminal activity.[9]

DISCUSSION

Defendant makes several arguments. First, he argues that the Officers did not

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[6]*Id.* (quoting *Terry*, 392 U.S. at 21).

[7]*Id.* (citing *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981)).

[8]962 A.2d at 218.

[9]997 A.2d 656, 665 (Del. 2010) (emphasis omitted) (quoting *Williams*, 962 A.2d at 219).

have a reasonable articulable suspicion that criminal activity was afoot. Second, Defendant opines that the community caretaker doctrine does not apply pursuant to *State v. Roberts*.[10] Third, in a related argument, Defendant states that the Officers showed an apparent intent to seize Defendant and that the facts do not point to a need for police assistance.

The State argues that Patrolman Stubbs had several valid reasons to initially investigate the Dodge pickup. First, it was in the early morning hours and the gas station was closed. Second, the Officers could see that the pickup was running and the lights were on. Third, the particular gas station had a history of being burglarized and robbed. Fourth, the pickup was parked in no particular parking spot. Instead, it was parked on the concrete fueling pad where tanker trucks refuel the gas station. Although Patrolman Stubbs testified that he initially suspected criminal behavior, his suspicion changed to concern for the health and welfare of Defendant upon pulling alongside of Defendant. Therefore, the State concludes that the seizure was legally justified under the community caretaker doctrine. For the reasons articulated below, the Court agrees.

As an initial matter, the Court finds that Defendant was seized when the Officers switched on the patrol car's emergency flashers.[11] The police entry into the Valero parking lot while it was closed to investigate the pickup in question was

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[10]2001 WL 34083579, at *3 (Del. Super. Sept. 27, 2001).

[11]*Enos*, 2003 WL 549212, at *2-*3; *Clay*, 2002 WL1162300, at *2; *Caliph*, 2002 WL 338075, at *2; *Roberts*, 2001 WL 34083579, at *2; *Cannon*, 1997 WL 718646, at *3.

proper. Defendant does not have standing to challenge the entry.[12] The only remaining question is whether there is an applicable exception to the warrant requirement to justify the seizure in the situation at hand. Upon first approaching the pickup, the Officers observed a number of factors that, in their totality, started to approach reasonable suspicion for seizing the vehicle. Those reasons are summarized in the paragraph above and are discussed further below. After pulling up beside the vehicle, however, the suspicion that criminal activity was afoot was dispelled as the driver was asleep or unconscious. Although Defendant points out that on the radio call to "Kent Comm" the Officers stated that they were stopping a suspicious vehicle, the radio transmission is not the only evidence available as to why the Officers seized the vehicle. Patrolman Stubbs testified under oath that he was concerned for Defendant's health. The Court finds his testimony to be credible. Therefore, the Court examines the seizure under the community caretaker exception.

First, if there are objective, specific and articulable facts from which an experienced officer would suspect that a citizen is in apparent peril, distress or need of assistance, the police officer may stop and investigate for the purpose of assisting the person.[13] Patrolman Stubbs was a recent police academy graduate and had been

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[12]*See Hanna v. State*, 591 A.2d 158, 162-63 (Del. 1991). "Standing 'depends not upon a property right in the invaded place but upon whether the person . . . has a legitimate expectation of privacy in the invaded place.'" *Id.* at 163 (quoting *Rakas v. Illinois*, 439 U.S. 128, 143, 99 S.Ct. 421, 430, 58 L.Ed.2d 387 (1978)). Focusing on the police entry into the Valero parking lot only, and not on the subsequent seizure of Defendant's pickup truck, Defendant had no legitimate expectation of privacy in a closed gas station parking lot directly adjacent to a major state highway.

[13]*Moore*, 997 A.2d at 665; *Williams*, 962 A.2d at 219.

on patrol less than a month at the time of the incident. Although the Court has no information on the seniority of FTO Perna, he was riding along with Patrolman Stubbs for the apparent purpose of training him. The facts and inferences that once approached reasonable suspicion that a crime was afoot subsequently led the Officers to believe that Defendant was in apparent peril, distress, or in need of assistance. Before they activated their emergency lights to approach Defendant, the Officers knew the following: (1) it was after 3 A.M.; (2) the Valero gas station was closed; (3) the pickup was parked haphazardly on the gas station's refueling pad; (4) the pickup's engine was running and its lights were on; and (5) the driver was asleep or unconscious with his seatbelt on.

The Court finds that the totality of the facts and circumstances above were sufficient for an experienced officer to suspect that Defendant was in apparent peril, distress, or need of assistance. The Court does not continue the community caretaker analysis as Defendant only questions the initial decision to seize, not any actions thereafter. The Court also finds *State v. Roberts*[14] to be distinguishable from the case at bar. Before the State Police Trooper activated her emergency lights in *Roberts*, the only facts she knew were that the car in question was idling on the shoulder of the highway with its lights on and that the car had not been there when the Trooper passed the spot moments earlier. The Court agrees with the *Roberts* Court that the facts in that case did not justify a seizure under the community caretaker doctrine. The Officers in the case at bar had several key additional objective, specific, and

[14]2001 WL 34083579.

articulable facts to justify a seizure.

CONCLUSION

The seizure in this case was proper pursuant to the community caretaker exception to the warrant requirement. As no other officer conduct is challenged, the motion to suppress is hereby denied.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh
oc: Prothonotary
xc: Counsel