[Cite as *State v. Weese*, 2013-Ohio-4056.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 12AP-949
v.	:	(M.C. No. 2012 TR C 160514)
Wendy S. Weese,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 19, 2013

Richard C. Pfeiffer, Jr., City Attorney, and *Orly Ahroni*, for appellee.

Shaw & Miller, and *Mark J. Miller*, for appellant.

APPEAL from the Franklin County Municipal Court.

SADLER, J.

{¶ 1} Defendant-appellant, Wendy S. Weese, appeals from a judgment of the Franklin County Municipal Court following her plea of no contest to operating a vehicle under the influence of alcohol or drugs ("OVI") and a parking violation. For the following reasons, we affirm the judgment of the trial court.

I. BACKGROUND

{¶ 2} Appellant was issued a citation for OVI and for parking "[i]n front of a public or private driveway" pursuant to R.C. 4511.68(A)(2). Appellant filed a motion to suppress alleging that Officer Jon B. Gebhart lacked reasonable suspicion to make an investigatory stop. Plaintiff-appellee, the state of Ohio, filed a memorandum in

opposition and the trial court held a hearing on the motion. Therein, the following evidence was presented.

{¶ 3} On July 15, 2012, Officer Gebhart, the only witness to testify at the hearing, was on patrol in a marked city of Worthington police cruiser. According to Gebhart, at approximately 2:00 a.m., while completing an unrelated traffic stop, he overheard a dispatch from the city of Columbus. Gebhart testified the dispatch informed him that an impaired driver in a white Hyundai was traveling northbound on State Route 315. Gebhart testified that he did not remember if the description of the vehicle included a tag number or any other identifying information; nevertheless, he stated he saw a vehicle "that matched the description" drive past his location sometime later. (Tr. 14.) Gebhart stated he did not notice any erratic or illegal driving at that time.

{¶ 4} According to Gebhart, after completing the first traffic stop, he observed the same white Hyundai on Wilson Bridge Road stopped in a "very odd" position. (Tr. 16.) Gebhart testified the white Hyundai, operated by appellant, "was at the very end of the entrance driveway to the bank, and the front end of it was partially out into the roadway causing an individual * * * to have to swerve and miss the vehicle." (Tr. 16.) Gebhart stated he was concerned appellant was either impaired or had a medical condition because of the position of her vehicle.

{¶ 5} Gebhart testified he pulled behind appellant's vehicle and turned his overhead lights on. He stated appellant, unprompted, opened her car door. Gebhart stated he approached the vehicle and noticed appellant had become "sick" inside the vehicle. (Tr. 18.) The state concluded their case with video footage from Gebhart's cruiser.

{¶ 6} An independent review of the relevant portion of the video reveals that Gebhart pulled behind appellant's already stationary vehicle, effectively blocking a lane of traffic, and turned his visibar lights on. Appellant's vehicle was stopped, blocking the bank's exit lane, with the front driver side tire slightly protruding into the roadway. Appellant then opened the door of her vehicle and leaned out. Gebhart exited his cruiser and, while walking toward appellant, asked her if everything was okay.

{¶ 7} The suppression hearing concluded with closing statements. The state's argument was two-fold. First, that no seizure occurred under the Fourth Amendment

because Gebhart had reasonable suspicion to approach appellant's vehicle based on the dispatch call and the parking violation, and second, that because Gebhart was conducting a "wellness check," reasonable suspicion was not required to conduct a traffic stop, and, thus, the Fourth Amendment was not implicated. (Tr. 39.) In response, appellant argued both that her vehicle was not parked in violation of R.C. 4511.68(A)(2) and that the dispatch call was unreliable and could not be relied upon by Gebhart to conduct an investigative stop. Appellant further argued the state's wellness check argument was based on Gebhart's "speculation" and "guesses" about appellant's condition. (Tr. 40.)

{¶ 8} The trial court issued an entry denying appellant's motion to suppress, reasoning both that, under the totality of the circumstances, Gebhart had reasonable suspicion to perform an investigative stop and that, "even in the absence of reasonable suspicion * * *, officers may perform investigative stops to carry out 'community caretaking functions,' such as safety checks on occupants of illegally parked cars." (Oct. 23, 2012 Judgment Entry, 4.) After the trial court rendered its decision, appellant pled no contest to both charges and was sentenced to a fine, court costs, and a suspended jail term. This appeal followed.

II. ASSIGNMENTS OF ERROR

{¶ 9} Appellant brings a sole assignment of error for our review:

> The trial court erred in denying Appellant's motion to suppress because the arresting officer lacked reasonable suspicion to make an investigatory stop.

III. DISCUSSION

A. First Assignment of Error

{¶ 10} Appellant's sole assignment of error challenges the denial of her motion to suppress. Specifically, appellant argues that Gebhart lacked not only reasonable suspicion to make an investigatory stop, but that he was not engaged in a community caretaking function at the time. The sole issue before us is whether the initial encounter between Gebhart and appellant constituted a "seizure" implicating the Fourth Amendment.

{¶ 11} "Appellate review of a motion to suppress presents a mixed question of law and fact." *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. "When considering a motion to suppress, the trial court assumes the role of fact finder and,

accordingly, is in the best position to resolve factual questions and evaluate witness credibility." *Columbus v. Body*, 10th Dist. No. 11AP-609, 2012-Ohio-379, ¶ 9, citing *Burnside* at ¶ 8, citing *State v. Mills*, 62 Ohio St.3d 357, 366 (1992). As such, an appellate court must accept the trial court's factual findings if they are supported by competent, credible evidence. *Id.*, citing *Burnside* at ¶ 8, citing *State v. Fanning*, 1 Ohio St.3d 19 (1982). "Accepting these facts as true, the reviewing court must then independently determine, without deference to the trial court's conclusion, whether the facts satisfy the applicable legal standard." *Id.*, citing *Burnside* at ¶ 8, citing *State v. McNamara*, 124 Ohio App.3d 706 (4th Dist.1997).

{¶ 12} Appellant argues she was seized in violation of the Fourth Amendment. The Fourth Amendment to the United States Constitution, as well as Section 14, Article I of the Ohio Constitution, prohibits unreasonable searches and seizures. *State v. Kinney*, 83 Ohio St.3d 85, 87 (1998); *Katz v. United States*, 389 U.S. 347, 351 (1967). A police stop of a motor vehicle is a significant intrusion requiring justification as a "seizure" within the meaning of the Fourth Amendment. *Delaware v. Prouse*, 440 U.S. 648 (1979). The investigative stop exception to the Fourth Amendment warrant requirement permits a police officer to stop an individual, provided the officer has the requisite reasonable suspicion based upon specific, articulable facts that a crime has occurred or is imminent. *Terry v. Ohio*, 392 U.S. 1, 21 (1968).

{¶ 13} However, police officers are not required to possess reasonable suspicion of criminal activity when exercising community caretaking functions. *State v. Chapa*, 10th Dist. No. 04AP-66, 2004-Ohio-5070, ¶ 8, citing *State v. Norman*, 136 Ohio App.3d 46 (3d Dist.1999). "[C]ourts recognize that a community-caretaking/emergency-aid exception to the Fourth Amendment warrant requirement is necessary to allow police to respond to emergency situations where life or limb is in jeopardy." *State v. Dunn*, 131 Ohio St.3d 325, 2012-Ohio-1008, ¶ 21. Local police officers frequently investigate vehicle accidents where there is no claim of criminal liability to engage in community caretaking functions, "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Chapa* at ¶ 8, citing *Cady v. Dombrowski*, 413 U.S. 433 (1973). "Likewise, under appropriate circumstances, a law enforcement officer may be justified in approaching a vehicle to provide assistance without needing any reasonable

basis to suspect criminal activity." *Id.* at ¶ 8, citing *Norman*. The bounds of an officer's ability to investigate, pursuant to the community caretaking function, are not limitless. A police officer must possess "objectively reasonable grounds to believe that there is an immediate need for his or her assistance to protect life or prevent serious injury to effect a community-caretaking/emergency-aid stop." *Dunn* at ¶ 26.

{¶ 14} We first determine if the trial court's relevant factual findings are supported by competent, credible evidence. After reviewing video evidence and hearing the testimony of Gebhart, the sole witness, the trial court found "the front end of the car was positioned so that the front driver's side tire was in the roadway beyond the edge of the apron" and that "[t]he car entirely blocked the 'exit' side of the access ramp" to the bank. (Oct. 23, 2012 Judgment Entry, 2.) The trial court stated "Gebhart did testify credibly" that one of his reasons for approaching appellant was his concern that appellant had a medical condition. (Oct. 23, 2012 Judgment Entry, 2.)

{¶ 15} Our review of the transcript revealed Gebhart was concerned appellant may be suffering from a medical condition, due in part, because the car was parked in a "very odd" position with legal parking spots only 20 yards away. (Tr. 16.) Additionally, according to Gebhart, he was concerned that appellant's vehicle was partially blocking the roadway, posing a danger to other motorists. We find the evidence supports the trial court's findings on the position of appellant's vehicle, as well as the reasoning for Gebhart's approach of the vehicle. We therefore accept the trial court's factual findings as they are supported by competent, credible evidence.

{¶ 16} We next examine whether the facts of this case satisfy the community caretaker exception as applied by the trial court. The state argues the community caretaker exception, as applied in our decision in *Chapa*, should govern the outcome of this case.

{¶ 17} In opposition, appellant argues, regardless of the factual similarities between this case and *Chapa*, the community caretaker exception is inapplicable. Unlike the defendant in *Chapa*, appellant argues she was not parked illegally so the exception cannot apply to Gebhart's actions. However, we find no authority, in *Chapa* or otherwise, to support appellant's position.

{¶ 18} In *Chapa*, the police officer observed defendant's vehicle stationary in the middle of the road obstructing the passage of other vehicles. From the officer's perspective, there was no observable reason for the vehicle to be stopped. The officer then pulled behind the vehicle, turned on his flashers, and approached the vehicle. In concluding the community caretaker exception applied, we held "[a] law enforcement officer in Trooper Shearer's position could reasonably have had concerns as to whether the car was disabled, the car had been involved in an accident, the driver was injured, or a host of other reasonable possibilities." *Id.* at ¶ 8. Although we found the car to be in an unusual position to be stopped, we did not specifically note that the car was illegally parked nor required that a car be parked or operated illegally for the community caretaking function to apply.

{¶ 19} In the instant case, Gebhart testified to, and was faced with, a similar situation as the officer in *Chapa*. Like the officer in *Chapa*, Gebhart approached appellant's stationary vehicle because of the "unusual position * * * in the bank parking lot at 2:00 a.m." and activated his visibar lights. (Oct. 23, 2012 Judgment Entry, 2.) According to Gebhart, the odd position of the vehicle made him think appellant was suffering from a medical condition. Gebhart also stated he was concerned for other drivers because appellant's vehicle was protruding into the roadway, which would require other drivers to swerve to avoid it.

{¶ 20} The proper standard in caretaker cases was defined by the Supreme Court of Ohio's decision in *Dunn*. In *Dunn*, officers received a dispatch call that defendant was suicidal, carrying a weapon, and was going to commit suicide when he reached his destination. The officers found the defendant's vehicle and initiated a traffic stop. The officers' traffic stop of defendant was not premised upon any suspicion of illegal behavior, but on the officers' job as a community caretaker. They held a police officer must possess "objectively reasonable grounds to believe that there is an immediate need for his or her assistance to protect life or prevent serious injury to effect a community-caretaking/emergency-aid stop." *Id.* at ¶ 26.

{¶ 21} We applied the above standard in *Chapa*. In *Chapa*, the officer's initial approach of the vehicle was premised upon the officer's concern that the defendant was suffering from a medical condition. Our application of the caretaker exception in that

case did not rest solely on the location, whether it was legal or illegal, of defendant's vehicle, and we do not veer from that path now. As stated in *Dunn*, the standard upon which we test an officer's actions as a community caretaker is one of objective reasonableness. *Id.*

{¶ 22} When applying the above authority to the circumstances of this case, we find Gebhart had objective and reasonable grounds on which to base his safety concerns.

{¶ 23} Therefore, we agree with the trial court and find the initial acts of Gebhart were taken as a community caretaker and did not constitute a "seizure" under the Fourth Amendment. Accordingly, we find the trial court properly denied appellant's motion to suppress, and we overrule appellant's sole assignment of error.

IV. CONCLUSION

{¶ 24} Having overruled appellant's sole assignment of error, we affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

BROWN and DORRIAN, JJ., concur.
