

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0548-16T3

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

ARMANDO RAMOS,

Defendant-Respondent.

Argued April 25, 2017 – Decided June 26, 2017

Before Judges Fisher, Vernoia and Moynihan.

On appeal from the Superior Court of New
Jersey, Law Division, Atlantic County,
Municipal Appeal No. 0027-15.

John J. Lafferty, IV, Assistant Prosecutor,
argued the cause for appellant (Damon G.
Tyner, Atlantic County Prosecutor, attorney;
Mr. Lafferty, of counsel and on the brief).

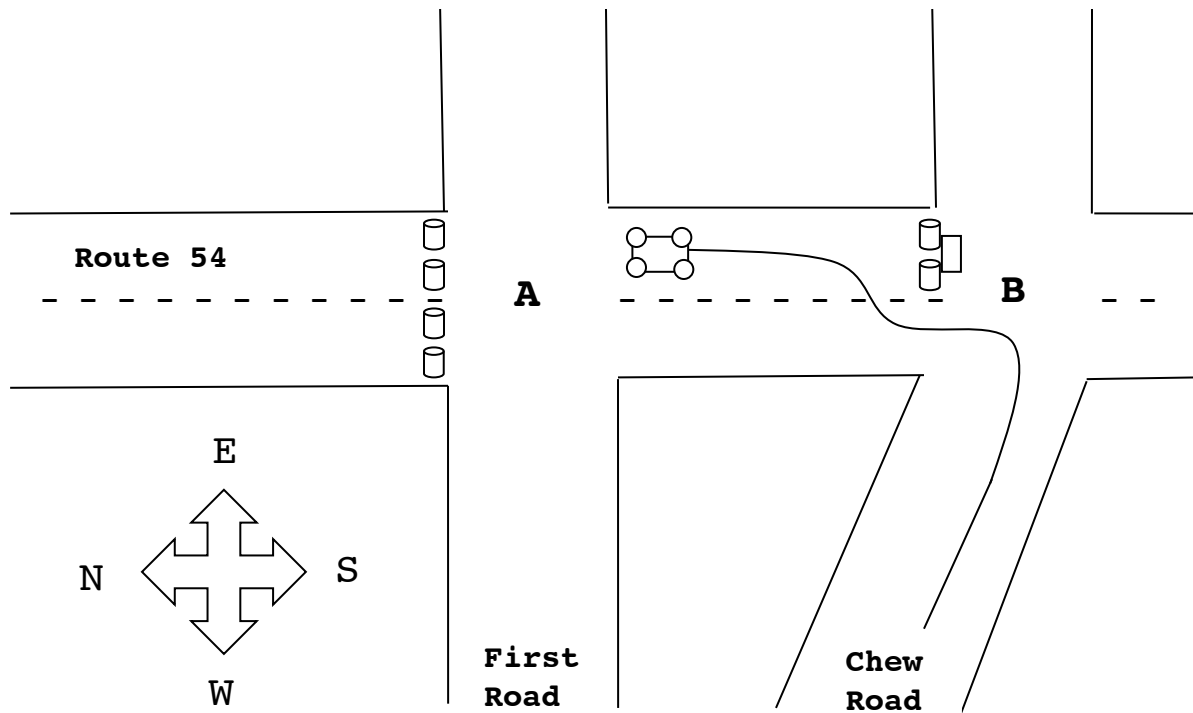
Louis M. Barbone argued the cause for
respondent (Jacobs & Barbone, P.A.,
attorneys; Mr. Barbone and John R. Stein, on
the brief).

PER CURIAM

In this appeal, the State challenges an order suppressing
evidence – derived from a motor vehicle stop – to support a

charge that the driver was intoxicated, N.J.S.A. 39:4-50. We reverse because defendant's abnormal operation of his vehicle, as he maneuvered around barrels and a road-closed sign barring his lane of travel, justified the officer's utilization of the community caretaker exception to the warrant requirement.

Defendant was charged with driving while intoxicated, N.J.S.A. 39:4-50, and other motor vehicle violations. He moved in municipal court for suppression of evidence gathered during the motor vehicle stop; the judge considered that question at a suppression hearing. The only witness - the police officer who conducted the motor vehicle stop - testified that, around midnight on June 24, 2014, he was on duty and assigned to traffic detail concerning road construction on Route 54. Specifically, he was stationed at what is depicted in the diagram below as Intersection A:



His aim was to ensure that no northbound vehicles on Route 54 traveled further north from Intersection B, or by turning north from either direction on Chew Road onto Route 54. In addition, vehicles traveling on First Road into Intersection A were either directed into the southbound lane of Route 54 or were permitted to stay on First Road as they traveled east or west on First Road.

Around 2 a.m., the officer's attention was drawn to a vehicle traveling east on Chew Road that entered Intersection B, turning left onto Route 54 by traversing around the two barrels¹ that impeded any vehicles attempting to travel north from

¹ The barrels were accompanied by a Department of Transportation (DOT) approved road closure sign.

Intersection B toward Intersection A. This observed vehicle was driven by defendant; his path is designated by the line that starts at Chew Road at the bottom of the diagram and ends with the depicted vehicle stopped at Intersection A.

The officer testified that, as the vehicle moved toward Intersection A, he walked into the intersection and motioned for defendant to stop his vehicle. As with prior motorists that night,² the officer walked to the driver side window and inquired about defendant's intentions in conformity with his mission to keep vehicles from traveling north through that intersection on Route 54. The officer testified that he "could smell an odor of an alcoholic beverage coming from the vehicle" as he spoke with defendant. The officer asked for credentials; defendant was slow to comply and fumbled with his documentation. Eventually, defendant was charged with driving while intoxicated and other motor vehicle offenses.

The municipal judge found from this undisputed testimony a reasonable and articulable suspicion of a motor vehicle violation and, also, that the stop and inquiry of defendant was

² During the first two hours of his tour of duty, the officer observed five or six other vehicles enter the barricaded area. He testified that each vehicle was stopped and each given directions helpful to their intended course. The officer testified Intersection B was sufficiently lit, and all drivers entering Intersection B would have had a clear view of the barrels and the road-closed sign.

permitted by the community caretaker exception. Consequently, the municipal judge denied defendant's suppression motion.

Defendant unsuccessfully moved in the Law Division for leave to appeal the order denying his suppression motion, and thereafter entered a conditional guilty plea. This was not defendant's first DWI conviction. He was sentenced to 180 days in the county jail, and a ten-year license suspension and other monetary penalties were imposed. The municipal judge, however, stayed the incarceration portion of the judgment, pending disposition of defendant's appeal to the Law Division.

In the Law Division, defendant challenged only the denial of his motion to suppress, arguing: (1) the circumstances did not support employment of the community caretaker exception; and (2) the officer lacked a reasonable and articulable suspicion that defendant violated N.J.S.A. 39:4-94.2(b) (driving on a closed road).

Upon de novo review, the Law Division judge found the officer "overstepped his bounds" in performing the vehicle stop because the State acknowledged the wrong moving violation was issued,³ thereby conceding defendant "wasn't in a place he wasn't

³ As noted above, defendant was charged with driving on a closed road, N.J.S.A. 39:4-94.2(b). During the proceedings regarding the suppression motion, the State recognized this charge could not be sustained, apparently because the required governmental
(continued)

supposed to be." Further elaborating, the judge stated that defendant's particular route into Intersection B – eastbound on Chew Road instead of northbound on Route 54 – meant he would not "necessarily see [the road-closed] sign." The judge surmised that a driver could have assumed the barriers were placed to cover or block "a pothole," or signal something other than the roadway's closure in that direction. And, because the judge found defendant had a right to reasonably assume the road was not closed, there was – in the Law Division judge's view – no ground upon which the officer's utilization of the community caretaker exception could rest.

In appealing the suppression order to this court, the State argues the Law Division judge "erred in concluding that there was no basis for stopping the defendant's vehicle under the community caretaker exception." Specifically, the State claims that the Law Division judge erred by "considering the reasonable objective basis for the stop from the perspective of the defendant instead of from the perspective of the officer" and failed to adhere to our decisions in State v. Martinez, 260 N.J.

(continued)

action necessary to close a road within the meaning of this statute could not be demonstrated. That fact, however, is not conclusive on the question of whether defendant was driving abnormally or in some way that warranted the officer's conducting a stop for community caretaking reasons.

Super. 75, 78 (App. Div. 1992) and State v. Washington, 296 N.J. Super. 569, 572 (App. Div. 1997). In reversing, we agree there was "sufficient evidence on the record that [the officer] observed the defendant operating his vehicle in an abnormal manner – driving in the southbound lane and around the barricade and sign, in the northbound lane – and was therefore justified in conducting a motor vehicle stop."

To explain, we start by invoking the Supreme Court's description of the dual roles performed by police officers in today's society:

On the one hand, they carry out traditional law enforcement functions, such as investigating crimes and arresting perpetrators. On the other hand, police officers perform a wide range of social services, such as aiding those in danger of harm, preserving property, and creating and maintaining a feeling of security in the community.

[State v. Bogan, 200 N.J. 61, 73 (2009).]

Differentiating between these two functions requires consideration of the officer's underlying motives. State v. Diloreto, 180 N.J. 264, 276 (2004). When motivated by a desire to "detect or solve a specific crime, such as making arrests, interrogating suspects, and searching for evidence," an officer acts in accord with the law enforcement function. Ibid. "Conversely, when motivated by a desire to 'ensure the safety

and welfare of the citizenry,' the officer acts pursuant to the community caretaking function." Ibid. "That function has its source in the ubiquity of the automobile and the dynamic, differential situations police officers are confronted with to promote driver safety." Washington, supra, 296 N.J. Super. at 572. This function "finds support in the premise that abnormal operation of a motor vehicle establishes a reasonably objective basis to justify a motor vehicle stop." Ibid. "What is reasonably objective is measured by the dynamics or totality of the circumstances from the perspective of the officer on duty at the time and not from the esoteric perspective of the courtroom." Ibid.

We have applied this community caretaking exception in various similar situations. For example, in State v. Goetaski, 209 N.J. Super. 362, 364-65 (App. Div. 1986), we held that a defendant driving slowly on a rural highway's shoulder, with a flashing left-turn indicator, as the vehicle traveled for a tenth of a mile justified a stop. In Martinez, supra, 260 N.J. Super. at 77-78, we found "that operation of a motor vehicle in the middle of the night on a residential street at a snail's pace between five and ten m.p.h. is indeed 'abnormal'" and justified a community-caretaker stop. It is enough that the abnormal conduct "engenders reasonable grounds to conclude that

the vehicle is a potential safety hazard to other vehicles and that there is either something wrong with the driver, with the car, or both." Washington, supra, 296 N.J. Super. at 572.


In examining the Law Division judge's decision, we only consider "whether the motion to suppress was properly decided based on the evidence presented at that time." State v. Jordan, 115 N.J. Super. 73, 76 (App. Div.), certif. denied, 59 N.J. 293 (1971). If there is sufficient credible evidence in the record, we defer to the judge's findings. See State v. Elders, 192 N.J. 224, 243 (2007). The judge's legal conclusion as to the meaning of undisputed facts, however, is not entitled to deference. State v. Handy, 206 N.J. 39, 45 (2011).

We reverse because we are satisfied that the judge's factual suppositions about what defendant might have thought – defendant, as mentioned earlier, never testified – are inconsistent with the police officer's unrebutted testimony and, also, because the judge misapplied the community caretaker exception. The undisputed facts reveal the officer's stop of defendant's vehicle occurred late at night and was based on his observation of defendant's vehicle as it entered the wrong lane of traffic on Route 54 by driving around barrels and a road-closed sign that cautioned against such a movement. Defendant's vehicle was headed toward Intersection A, where he would be

unable to travel further on Route 54. From the officer's perspective – regardless of whether defendant's operation of the vehicle constituted a motor vehicle violation – the vehicle was being abnormally operated and justified the stop and the officer's approach toward the driver to inquire about where defendant intended to go. In this setting, application of the community caretaker exception required no more.

We reverse the Law Division's order of August 29, 2016, which granted defendant's motion to suppress. We also vacate the stay of the incarceration portion of the sentence imposed.⁴

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION

⁴ In granting suppression of evidence, the Law Division judge took no further action with respect to the municipal court judgment. For example, the Law Division judge's order did not vacate the municipal court judgment or dismiss the charges. Consequently, by operation of our reversal of the Law Division order granting suppression, we assume that the municipal court judgment remains in place and that the sentence and penalties imposed will continue to have effect. We remand to the Law Division judge to ensure that our mandate is carried out.