SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5432-14T3

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

RYAN SUTHERLAND,

Defendant-Respondent.

Argued March 8, 2016 – Decided May 5, 2016
Remanded by Supreme Court January 11, 2018
Submitted April 17, 2018 – Decided May 30, 2018

Before Judges Yannotti, Carroll and DeAlmeida.

On appeal from Superior Court of New Jersey, Law Division, Morris County, Indictment No. 14-10-0985.

Fredric M. Knapp, Morris County Prosecutor, for appellant (Paula Jordao, Assistant Prosecutor, on the brief; Claudia Joy Demitro, Deputy Attorney General, of counsel and on the brief).

Nelson Gonzalez, attorney for respondent.

PER CURIAM

This matter comes before us on remand from the Supreme Court. At issue is whether a traffic stop, made without reasonable

suspicion of illegal activity, and ultimately resulting in defendant's indictment for fourth-degree operating a motor vehicle during a period of license suspension for a second or subsequent DWI conviction, N.J.S.A. 2C:40-26(b), was lawful under the community caretaking doctrine. We hold that it was not. As a result, we affirm the trial court's order suppressing the evidence resulting from the stop and remand the matter for further proceedings consistent with this opinion.

I.

The following facts were adduced during a suppression hearing in the trial court. At about 9:00 p.m., on February 3, 2014, Officer Carletta of the Mount Olive Township Police Department was on motor vehicle patrol southbound on Route 206 in a drizzling rain. A car driven by defendant passed him traveling northbound. Looking in his rearview mirror, the officer noticed that defendant's vehicle appeared to have a malfunctioning taillight. Although the vehicle had four taillights in total, two on each side, and although only one light on the passenger side was not illuminated, Officer Carletta believed the vehicle was in violation of Title 39, the motor vehicle code. The officer made a U-turn and began to follow the vehicle.

Once he confirmed that the taillight was not operational, Officer Carletta executed a motor vehicle stop. Having approached

the vehicle, the officer asked defendant for his driver's license, motor vehicle registration, and proof of insurance. Defendant initially said that he did not have his driver's license with him, but then admitted that he did not have a valid driver's license. The officer returned to his vehicle to check defendant's identifying information with police dispatch.

After confirming that defendant's license was suspended, Officer Carletta issued defendant two summonses: driving with a suspended license in violation of N.J.S.A. 39:3-40, and failure to maintain the vehicle's "lamps" in violation of N.J.S.A. 39:3-66. A subsequent record search revealed defendant's three prior DWI convictions. A grand jury thereafter indicted and charged defendant with fourth-degree operation of a motor vehicle during a period of license suspension for a second or subsequent DWI conviction in violation of N.J.S.A. 2C:40-26(b).

Defendant filed a motion to suppress the evidence obtained as a result of the traffic stop. He argued that the stop was unconstitutional because it was made without reasonable and articulable suspicion of illegal activity, given that it is not a violation of the motor vehicle code to operate a vehicle with one inoperable taillight, as long as at least one taillight on each side of the vehicle is illuminated. The State opposed the motion, arguing that the single malfunctioning taillight provided Officer

Carletta with reasonable suspicion to stop the vehicle, and because the stop was lawful under the community caretaking doctrine that permits police officers to take steps to protect public safety.

The trial court granted defendant's motion to suppress. The judge agreed that the officer's understanding of the motor vehicle code had been incorrect, and that defendant had not violated Title 39 because he had at least one functioning taillight on each side of his vehicle. Finding that the officer's mistaken view of the law was not objectively reasonable, the trial court concluded that the warrantless stop of defendant's vehicle was not justified.

The trial court also rejected the State's argument that the vehicle stop was permissible under the community caretaking doctrine. Officer Carletta testified that in his experience drivers usually do not check their vehicle taillights before driving, so he "stop[s] them to let them know that there is a problem with their lamp and it needs to be taken care of." According to the officer, his usual practice in such circumstances is to give the driver a warning rather than a summons and "send them on their way" so that the driver "has the opportunity to" repair the inoperable light.

The trial court concluded that the State "failed to present compelling evidence that defendant's vehicle presented a safety hazard, thus warranting the community caretaking doctrine." The

court noted that the officer "did not express any public safety concerns in his role as 'caretaker,'" and made the factual finding that the officer "acted solely and exclusively pursuant to law enforcement objectives, based on his good faith, yet misplaced, belief as to the" meaning of Title 39.

The State sought leave to appeal, arguing that Officer Carletta had reasonable and articulable suspicion to stop defendant's vehicle, that the officer's mistake of law was objectively reasonable, and that the stop was lawful under the community caretaking doctrine.

After granting leave to appeal, this court reversed the trial court. We held that "even if the officer was mistaken that the inoperable tail light constituted a Title 39 violation, he had an objectively reasonable basis for stopping defendant's vehicle" that was tolerated under the Fourth Amendment. State v. Sutherland, 445 N.J. Super. 358, 360 (App. Div. 2016). As a result, we held that the evidence resulting from the stop was admissible. Our reasoning made it unnecessary to reach the State's argument about the applicability of the community caretaking doctrine. Id. at 371.

The Supreme Court granted defendant's motion for leave to appeal and reversed this court. The Court held that the relevant provisions of Title 39 are unambiguous and that "the officer's

erroneous application of the functioning taillight requirement was not an objectively reasonable mistake of law." State v. Sutherland, 231 N.J. 429, 445 (2018). "Simply put, this was not a good stop." Ibid. Because the State's defense of the stop under the community caretaking doctrine was not addressed by this court, the matter was remanded for consideration of that argument.

II.

Our analysis begins with the foundational principle that a police stop of a moving motor vehicle is a seizure of the vehicle's occupants and therefore falls within the purview of the Fourth Amendment and Article I, Paragraph 7 of the New Jersey Constitution. Whren v. United States, 517 U.S. 806, 809-10 (1996); State v. Baum, 199 N.J. 407, 423 (2009). Ordinarily, "a police officer must have a reasonable and articulable suspicion that the driver of a vehicle, or its occupants, is committing a motor-vehicle violation or a criminal or disorderly persons offense to justify a stop." State v. Scriven, 226 N.J. 20, 33-34 (2016).

The community caretaking doctrine is an exception to the Fourth Amendment's warrant requirement. State v. Vargas, 213 N.J. 301, 324 (2013); State v. Cassidy, 179 N.J. 150, 161 n.4 (2004). The doctrine is based on "a wide range of social services" that police provide to ensure the safety and welfare of the public, State v. Edmonds, 211 N.J. 117, 141 (2012) (quoting State v. Bogan,

200 N.J. 61, 73 (2009)), and applies when the police are engaged in functions totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute. State v. DiLoreto, 180 N.J. 264, 275 (2004). Community caretaking by police officers includes "aiding those in danger of harm, preserving property, and creating and maintaining a feeling of security in the community." Bogan, 200 N.J. at 73 (quotations, alterations, and citation omitted).

Under the exception, police need not demonstrate probable cause or an articulable suspicion to believe that evidence of a crime will be found to justify a seizure under the Fourth Amendment. DiLoreto, 180 N.J. at 276. Their conduct, however, must be "objectively reasonable under the totality of the circumstances." Id. at 278. The doctrine is "a narrow exception to the warrant requirement" subject to "meticulous judicial review" of the facts surrounding the challenged police actions. Id. at 282.

The State bears the burden to prove that its seizure of a vehicle falls under the exemption. Scriven, 226 N.J. at 38; Vargas, 213 N.J. at 314. In reviewing a motion to suppress, we "uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record." State v. Elders, 192 N.J. 224, 243 (2007)

(quotations omitted). This is especially true when the trial court findings are "substantially influenced by [its] opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." Id. at 244 (quoting State v. Johnson, 42 N.J. 146, 161 (1964)). The trial court's legal conclusions are entitled to no special deference, and are reviewed de novo. State v. Gandhi, 201 N.J. 161, 176 (2010).

The applicability of the community caretaking doctrine to motor vehicle stops has been examined in a number of contexts. In State v. Goetaski, 209 N.J. Super. 362 (App. Div. 1986), a State trooper observed a vehicle at 4:00 a.m. travelling slowly on the shoulder of a state highway in a rural, fifty-miles-per-hour zone with its left turn signal activated. After observing operation of the vehicle in this fashion for one-tenth of a mile, the trooper effectuated a stop. Id. at 363. Based on the driver's conduct during the stop, he was arrested for driving while intoxicated. He moved to suppress the evidence arising from the stop because the trooper lacked reasonable and articulable suspicion of illegal activity when he pulled the driver over. Ibid. The trial court denied the suppression motion.

On appeal, we accepted the driver's argument that "no specific violation, such as swerving erratically or equipment defect, was observed by the officer" prior to the vehicle stop. Id. at 364.

Applying the community caretaking doctrine, however, we noted that an officer observing the defendant's operation of his vehicle

> would have reason to believe that either there's something wrong with the driver, he's having a problem or there is something out of the ordinary. People don't drive on the shoulder of the road, especially with their left turn signals on [in the middle of the night in a rural area] if there's not something wrong.
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> [Id. at 365 (alterations in original).]

Noting an emerging line of precedents from other states holding that "police stops of vehicles were justified to warn occupants that an item of property was endangered or a condition of the vehicle created a potential traffic hazard," we held that "the facts were unusual enough for the time and place to warrant the closer scrutiny of a momentary investigative stop and inquiry" to satisfy constitutional concerns. Id. at 366. We continued,

> [i]n this case, we will not substitute our judicial hindsight for what appears to us as a sound, nonpretextual exercise of curbstone judgment by the officer. But we do not hesitate to add that this stop is about as close to the constitutional line as we can condone.
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> [Ibid.]

In State v. Martinez, 260 N.J. Super. 75, 77 (App. Div. 1992), the defendant was observed by an officer travelling "'at a snail's pace'" of less than ten miles per hour in a residential twenty-

five-miles-per-hour zone at 2:00 a.m. "[A]lthough otherwise presenting no occasion for inquiry," the officer followed the vehicle before effectuating a stop. Ibid. Based on the officer's observations during the stop, the defendant was charged with driving while intoxicated. The defendant challenged his conviction based on the legality of the vehicle stop.

We found the officer's actions to be within constitutional bounds:

> We take notice . . . 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," as the Trooper testified. Such abnormal conduct suggests a number of objectively reasonable concerns: (a) something might be wrong with the car; (b) something might be wrong with its driver; (c) a traffic safety hazard is presented to drivers approaching from the rear when an abnormally slow moving vehicle is operated at night on a roadway without flashers; (d) there is some risk that the residential neighborhood is being "cased" for targets of opportunity. Possibilities (a), (b) and (c) involve the "community caretaking function" expected of alert police officers.
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> We are satisfied . . . that the stop was objectively reasonable and fell far short of the line of unconstitutionality we drew in Goetaski.
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> [Id. at 78.]

See also State v. Washington, 296 N.J. Super. 569, 572 (App. Div. 1997) (under community caretaking doctrine police had objectively reasonable basis to stop car operating at slow speed and weaving within its lane of travel at 12:20 a.m., because behavior indicated something wrong with driver, vehicle, or both, creating potential safety hazard).

In Scriven, a police officer was on foot investigating an abandoned vehicle with his patrol car parked on an adjoining perpendicular street. Defendant was a passenger in a motor vehicle that approached the officer with its high beams on at normal speed. 226 N.J. at 27. The officer, under the erroneous belief that it was illegal to operate a vehicle with its high beams illuminated, used a flashlight to stop the vehicle. He testified that he "intended to educate the driver on the proper use of high beams — that is, to tell her 'you can't drive with your high beam on.'" Id. at 28. He also testified that the use of high beams "'always sends up a red flag'" and that in "his experience, stolen cars have been driven with high beams, and the blinding light takes away his tactical advantage to see inside a car and to know whether guns are pointed at him." Ibid. When he approached the car, the officer smelled marijuana, observed contraband, and, ultimately, discovered a weapon and ammunition in defendant's possession.

The defendant moved to suppress the evidence as the products of an unconstitutional stop, arguing that the relevant provision of the motor vehicle code requires a driver to dim her high beams only when another vehicle is approaching. In opposition, the State argued that the officer's mistaken interpretation of the high beam statute was objectively reasonable, and, alternatively, that the stop was justified under the community caretaking doctrine. On the second point, the State asserted that the use of the high beams could have been construed by the officer as a sign that "'something could have been wrong with the driver,'" and that the "lights presented a safety hazard to the officers and other potential drivers . . . ." Id. at 31.

The Court, having first held that the officer's mistaken interpretation of the high-beam statute was not objectively reasonable, rejected the argument that the stop was warranted under the community caretaking doctrine. Notably, the Court held that a stop that might have been permissible under the community caretaking doctrine is invalid if the officer's intention is to enforce a motor vehicle statute. The Court explained,

> We do not question that a police officer conducting an investigation on the street can ask and even instruct a driver to dim high beams if the brightness of the lights is obstructing or impairing the officer's ability to perform certain tasks. Certainly, a police officer could order motorists to dim their

> high beams while passing through an area where construction workers are fixing a roadway. Police officers acting in their community-caretaking roles can take such reasonable steps to ensure public safety in conformity with our Federal and State Constitutions.
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> Here, however, Officer Cohen did not signal to the driver to dim her high beams because they were interfering with his mission, which was waiting for a tow truck to take away an unregistered vehicle. Rather, he effectuated a motor-vehicle stop under the objectively unreasonable belief that the driver was in violation of the high-beam statute.
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> [Id. at 39-40.]

Applying these precedents to the facts before us leads to the conclusion that the stop of defendant's vehicle was not justified under the community caretaking doctrine. Like the officer in Scriven, Officer Carletta stopped defendant's vehicle under the mistaken, and unreasonable, belief that the defendant was operating a vehicle in violation of Title 39 because of a vehicle lighting issue. The fact that Officer Carletta issued defendant a citation for violating N.J.S.A. 39:3-66, rather than merely informing defendant that his taillight was not operational, is strong evidence that the officer's purpose in making the stop was to enforce the motor vehicle code.

In addition, unlike the circumstances that resulted in motor vehicle stops in Goetaski, Martinez, and Washington, the record contains no evidence that defendant was operating his vehicle in

an unusual manner that would arouse concern about his welfare or the mechanical fitness of his vehicle. Nor, as the trial court concluded, does the record contain evidence that defendant's operation of his vehicle presented a public hazard. The officer did not observe defendant speeding, weaving, or committing any moving violation. The only basis for the stop was the single malfunctioning taillight. As the Supreme Court made clear in its opinion in this matter, the Legislature has determined that it is lawful to operate a vehicle with one illuminated rear taillight on each side of the vehicle. Sutherland, 231 N.J. at 444. We are not in a position to contradict the implied legislative determination that operation of a vehicle lighted in this fashion does not present a hazard to the public.

We are not persuaded by the State's reliance on State v. Forgione, 265 N.J. Super. 63 (App. Div. 1993). In that case, a State trooper stopped a vehicle with New York plates and a defective brake light. Operating a vehicle with a defective brake light is a violation of Title 39. As the driver, a New York resident, produced the vehicle's registration, the trooper observed a container with suspected contraband. A subsequent search of the vehicle revealed a handgun. Id. at 66. The driver moved to suppress the evidence obtained during the stop based on N.J.S.A. 39:3-15, which exempts a non-resident owner of a vehicle

registered in another state, and in conformance with that state's laws, from the provisions of Title 39 concerning vehicle equipment. Ibid.

We reversed the trial court's suppression of the handgun, holding that because the exemption applies only to out-of-state residents, the only practical way to confirm that a car with out-of-state license plates qualifies for the exemption is for the officer involved to stop the vehicle to determine the driver's residence. Id. 66-67. Thus, the officer's stop of the vehicle was lawful. In addition, we noted that the exemption applies only if the vehicle is in compliance with the laws of its state of registration. We observed that because New York requires all motor vehicles to have two operating brake lights, the officer had reasonable suspicion of a violation of Title 39 justifying the stop. Id. at 67.

After stating these conclusions, we added the following observation:

> Finally and contrary to the trial court's viewpoint, regardless of the effect the statute may have on the right of a police officer to issue a summons to out-of-state vehicles, we are satisfied an officer, in the interest of public safety, can stop such a motor vehicle with non-operating lights. Laws require operable lights on motor vehicles to protect the travelling public. When such lights on a vehicle are not operable, for whatever reason, police officers may stop the

> vehicle and warn the driver of not only the inoperability but the danger of driving without lights.
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> [Id. at 67-68.]

We do not view this passage to apply to circumstances, such as in the present case, in which the inoperable light observed by an officer is not one required by statute to be illuminated. Forgione concerned a vehicle with an inoperable brake light, a condition that violated both New Jersey and New York law. Here, the Legislature determined that a vehicle can lawfully be operated with one taillight illuminated on each side of the vehicle, and, as noted above, the State produced no credible evidence that operation of defendant's car presented a safety hazard.

The trial court order suppressing the evidence resulting from the stop is affirmed. The matter is remanded for proceedings consistent with this opinion. We do not retain jurisdiction.