

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

TRACEY WEST,)	
)	
Defendant Below,)	
Appellant,)	
)	
v.)	C.A. No. 1406017464
)	
STATE OF DELAWARE,)	
)	
Plaintiff Below,)	
Appellee.)	

Date Submitted: June 19, 2015
Date Decided: August 20, 2015

*Upon Consideration of Appeal
From The Court of Common Pleas.*
AFFIRMED.

James O. Turner, Esquire, Office of Public Defender, Wilmington, Delaware.
Attorney for Appellant.

Marc C. Petrucci, Esquire, Department of Justice, Wilmington, Delaware.
Attorney for Appellee.

BUTLER, J.

INTRODUCTION

This is an appeal from a decision of the Court of Common Pleas denying Appellant Tracey West's ("Defendant") Motion to Suppress Evidence. After a suppression hearing, the Court of Common Pleas concluded that the community caretaker doctrine justified the stop of Defendant's vehicle and that any evidence gathered as a result of the stop would be admissible at trial.

PROCEDURAL POSTURE

On June 22, 2014, Defendant was charged with Improper Lane Change and Driving Under the Influence. Defendant moved to suppress the evidence and a hearing was held on January 6, 2015 at which Defendant challenged the basis for initiating a traffic stop on her vehicle. Her motion was denied. The court below found that there were no grounds to support the charge of Improper Lane Change, but the stop of the vehicle was justified based on the community caretaker doctrine. The court below based its ruling on the testimony of Corporal Thomas Gaul and the video recording from his patrol vehicle's dash-cam showing the Defendant's vehicle weaving from side to side within its lane of traffic. The Improper Lane Change charge was dropped, and Defendant was found guilty of Driving Under the Influence ("DUI") after a jury trial on January 13, 2015. Defendant was sentenced on April 10, 2015, and she has appealed the Court of Common Pleas' decision to deny her Motion to Suppress. For the reasons set

forth below, the Court of Common Pleas' decision to deny Defendant's motion is **AFFIRMED**.

FACTUAL BACKGROUND

On June 22, 2014 at approximately 2:00 a.m., Corporal Gaul observed a vehicle that was “drifting back and forth in the lane . . . several times over a distance of three to four miles.”¹ Corporal Gaul testified that the vehicle attracted his attention because “[m]ost vehicles and operators . . . maintain a straight line within that lane and this was just drifting from towards the shoulder back to the center line, back to the shoulder, back and forth several times”² Corporal Gaul followed the vehicle until it headed toward the on-ramp for Route 1 northbound, a major highway. The officer testified, and the video shows, that there is a concrete island adjacent to the on-ramp for Route 1 northbound, and “when the vehicle went to make the turn to get onto the ramp it traveled towards the concrete island and then at the last minute it cut back into the lane.”³ The officer further described the “cut back” as “[a] sharp turn of the wheel to maintain the lane.”⁴

¹ Suppression Hr'g Tr.7, January 6, 2015.

² *Id.*

³ *Id.* at 8.

⁴ *Id.* at 8.

Immediately after “she almost struck the median . . . ,” and while she was merging onto Route 1, Corporal Gaul decided to initiate a traffic stop on the Defendant’s vehicle.⁵ When Corporal Gaul was asked why he stopped the Defendant’s vehicle, he testified that “[s]he was getting on a . . . major highway[,]” and he “wanted to make sure she was safe at that point.”⁶ The officer testified that writing a ticket for a traffic violation was not his main concern when he stopped the vehicle.⁷ Ultimately, Corporal Gaul testified that, given the “erratic driving,” the time of night, and the fact that Defendant was merging onto a major highway, his intention was to conduct a “welfare check” on the driver.⁸

Upon stopping Defendant’s vehicle, Corporal Gaul approached the vehicle and he smelled a “very strong” odor of alcohol as soon as Defendant began to speak.⁹ Corporal Gaul also noticed Defendant’s slurred speech and bloodshot eyes.¹⁰ At that point, Corporal Gaul undertook a full DUI investigation, and Defendant was ultimately arrested.¹¹

⁵*Id.* at 14.

⁶ *Id.* at 18.

⁷ *Id.* at 26.

⁸ *Id.* at 25.

⁹ Trial Tr. 31-34, January 13, 2015.

¹⁰ *Id.*

¹¹ *Id.*

COURT OF COMMON PLEAS' DECISION TO DENY SUPPRESSION

At the suppression hearing, the court below was under the impression that there was controlling authority holding that weaving within one's own lane of traffic does not constitute reasonable suspicion to conduct a stop of a moving vehicle. Therefore, the court below granted the parties leave to submit case law regarding the community caretaker doctrine and whether that doctrine required an officer to observe a traffic violation prior to stopping a moving vehicle. No such requirement exists, and the court below issued its ruling in an e-mail because the trial date was rapidly approaching. The court below ruled that the community caretaker doctrine justified the traffic stop because "the State's witness articulated specific, objective facts upon which a reasonable police officer could have concluded the driver was in peril and needed assistance." Because the only issue before the court at the suppression hearing was whether the basis for initiating the traffic stop was constitutionally valid, the court did not make findings regarding reasonable suspicion or probable cause arising after the initial traffic stop.

PARTIES CONTENTIONS

Defendant has appealed to this Court and has asserted four main arguments: (1) Delaware does not recognize the community caretaker doctrine as a basis to conduct a traffic stop on a moving vehicle; (2) There was an insufficient showing of objective, specific and articulable facts indicating that the driver was in apparent

distress; (3) The court below did not address whether reasonable suspicion existed to continue the detention after the officer's caretaking function had concluded; and (4) The court below abused its discretion by raising the community caretaker doctrine *sua sponte* after the testimony at the suppression hearing had concluded. Predictably, the State disagrees with all four arguments.

STANDARD OF REVIEW

“In an appeal from the Court of Common Pleas to the Superior Court, the standard of review is whether there is legal error and whether the factual findings made by the trial judge are sufficiently supported by the record and are the product of an orderly and logical deductive process.”¹² If the findings of the Court of Common Pleas are supported by the record we must accept those findings even if, acting independently, this Court would have reached a contrary conclusion.¹³ This Court may make a *de novo* review of questions of law involved in the case.¹⁴

DISCUSSION

It is well settled law that “[u]nder the Fourth Amendment, a traffic stop is a seizure of a vehicle and its occupants by the State.”¹⁵ Therefore, Defendant was

¹² *Onkeo v. State*, 957 A.2d 2 (Table) (Del. 2008) (citations omitted).

¹³ *Id.*

¹⁴ *DiSabatino v. State*, 808 A.2d 1216, 1220 (Del.Super.2002) *aff'd*, 810 A.2d 349 (Del.2002).

¹⁵ *Caldwell v. State*, 780 A.2d 1037, 1045 (Del. 2001).

seized when Corporal Gaul undertook the traffic stop. “Although a warrantless seizure is presumed unreasonable under the Fourth Amendment, this presumption may be rebutted by showing that a specific exception to the warrant requirement applies.”¹⁶ One exception recognized in Delaware is the “non-criminal, non-investigative ‘community caretaker’ or ‘public safety’ doctrine.”¹⁷ In adopting the test for the community caretaker doctrine in *Williams v. State*, the Delaware Supreme Court recognized the evolving role of police officers:

The modern police officer is a “jack-of-all-emergencies,” with “‘complex and multiple tasks to perform in addition to identifying and apprehending persons committing serious criminal offenses’; by default or design he is also expected ‘to aid individuals who are in danger of physical harm,’ ‘assist those who cannot care for themselves,’ and ‘provide other services on an emergency basis.’ ” To require reasonable suspicion of criminal activity before police can investigate and render assistance in these situations would severely hamstring their ability to protect and serve the public.¹⁸

Defendant argues that the court below erred by applying the community caretaker doctrine as a basis for the seizure in this case because Delaware law prohibits its application in the context of motor vehicle stops. Defendant does not cite any case law that prohibits the application of the community caretaker doctrine in the context of a traffic stop.

¹⁶ *Williams v. State*, 962 A.2d 210, 216 (Del. 2008).

¹⁷ *Id.* (citing *State v. Lovegren*, 51 P.3d 471, 474 (2002)).

¹⁸ *Williams*, 962 A.2d at 216 (citations omitted).

A seizure is a seizure, and it should make no difference whether the person seized was driving in a car at the time of the seizure. If the community caretaker doctrine may constitutionally be applied as an exception to the warrant requirement when one's person is seized, it may equally be applied when that person is driving in a car. Therefore, the court below did not err by applying the community caretaker doctrine in the context of a traffic stop.

The community caretaker doctrine has three elements:

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.¹⁹

Defendant argues that the first prong of the test was not met because there was not a sufficient showing of objective, specific and articulable facts that the driver was in apparent distress.

At the suppression hearing, the officer testified that he intended to conduct a “welfare check” because he observed Defendant’s car continuously weaving within its lane for a distance of three to four miles at 2:00 a.m. Corporal Gaul also

¹⁹*Williams*, 962 A.2d at 219.

testified that he stopped the vehicle while it was merging onto a major highway and immediately after it made a sharp corrective turn to stay in its lane and avoid running over the median. The dash-cam video corroborates the officer's testimony.

The facts outlined above certainly justify any reasonable person in being concerned for the safety of the driver and the safety of the public at large. Therefore, there was ample evidence in the record to support the Court of Common Pleas' finding that there existed specific, objective facts upon which a reasonable police officer could have concluded the driver was in peril and needed assistance. Although cited by neither party, courts from other jurisdictions have approved of the community caretaker doctrine as a basis to stop a moving vehicle when it is weaving from side to side within its own lane because

[f]undamental logic dictates that an officer has a reasonably objective basis to stop a motor vehicle weaving down a roadway in the manner here. This is true whether or not the driver stays in his or her lane of travel. Even while maintaining one's lane of travel, a driver that weaves a car down a highway . . . 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.²⁰

²⁰*State v. Washington*, 687 A.2d 343, 344 (N.J. Super. Ct. App. Div. 1997); *See also State v. Maxwell*, 2012 WL 870170, at *2 (N.M. Ct. App. Feb. 17, 2012) (“[R]epeated weaving within a lane of traffic may give rise to specific, articulable safety concerns based upon possible driver distress and potential endangerment of the vehicle occupants and the public at large.”); *Apodaca v. State, Taxation & Revenue Dep’t, Motor Vehicle Div.*, 884 P.2d 515 (N.M. Ct. App.) (holding that the police officer’s observation of a driver’s motorcycle weaving within its lane of traffic supported the officer’s stop of the driver pursuant to the officer’s community caretaking function).

Defendant's next argument is that the court below erred because it did not address whether reasonable suspicion of criminal activity arose after the officer's community caretaking function had ended (prong three of the test set out in *Williams*). On appeal, Defendant argues that she never waived the argument that there was no reasonable suspicion of criminal activity to continue the stop and, therefore, this matter must be reversed because that issue was not considered.

Defendant's Motion to Suppress only challenged the initial decision to stop the vehicle on the ground that there was no improper lane change because "the video appears to not show Ms. West actually leave her lane of travel."²¹ Indeed, the Defendant's Motion to Suppress conceded that "[a]fter stopping her, the Officer detected an odor of alcohol and administered field sobriety tests."²² Furthermore, the record clearly shows that reasonable suspicion arose to justify continuing the traffic stop beyond the initial contact with Defendant. At trial, Corporal Gaul testified that he smelled a "very strong" odor of alcohol as soon as Defendant started to speak.²³ Corporal Gaul also testified that the Defendant's speech was slurred and that her eyes were glassy and bloodshot.²⁴ Therefore, there was

²¹ Defendant's Motion to Suppress at 2 (Dec. 1, 2014).

²² *Id.* at 1.

²³ Trial Tr. 31, January 13, 2015.

²⁴ *Id.* at 33.

reasonable suspicion of DUI to justify extending the stop to administer field sobriety tests.

Although the Court below based its opinion on the community caretaker doctrine, we note that an officer's observation of a vehicle weaving from side to side, albeit within a lane, and making sharp corrective turns to maintain the lane, for a distance of three to four miles at 2:00 a.m. could give rise to reasonable suspicion that the driver is impaired, and would justify initiating a traffic stop on the vehicle.²⁵

²⁵ See *Ebona v. State*, 577 P.2d 698 (Alaska 1978) (holding that officer's observation of vehicle swerving from side to side within its lane of traffic gave the officer a reasonable suspicion of imminent public danger that justified the stop of defendant's vehicle); *State v. Superior Court In & For Cochise Cnty.*, 718 P.2d 171, 175 (Ariz. 1986) (holding that officer's observation of vehicle weaving from side to side within its lane of traffic gave officer reasonable suspicion to justify investigatory stop); *State v. Field*, 847 P.2d 1280 (Kan. 1993) (holding that the officer's observation of defendant's vehicle weaving from side to side within its lane of traffic at two o'clock in the morning gave the officer reasonable suspicion of criminal activity sufficient to justify a stop of the vehicle); *State v. Ellanson*, 198 N.W.2d 136 (Minn. 1972) (holding that officer's observation of defendant's vehicle weaving within its lane of traffic on highway justified investigatory stop of the vehicle); *State v. Thomte*, 413 N.W.2d 916, 919 (Neb. 1987) ("We hold that a vehicle weaving in its own lane of traffic provides an articulable basis or reasonable suspicion for stopping a vehicle for investigation regarding the driver's condition Such a circumstance supports an officer's justifiable belief that the weaving vehicle is being driven by a person who is under the influence of alcohol"); *State v. Dorendorf*, 359 N.W.2d 115 (N.D. 1984) (holding that officer's observation of defendant's vehicle weaving from side to side within its lane of traffic justified investigatory stop of defendant's vehicle); *Arburn v. Dep't of Motor Vehicles*, 61 Cal. Rptr. 3d 15, 19 (Cal. Ct. App. 2007) (holding that defendant's "weaving and near miss of the curb created an immediate concern for public safety and raised a reasonable suspicion that he was driving under the influence."); *Roberts v. State*, 732 So. 2d 1127, 1128 (Fla. Dist. Ct. App. 1999) (holding that officer's observation of defendant's vehicle weaving from side to side within its lane of traffic gave the officer the reasonable suspicion necessary to detain the driver in order to determine if the driver was impaired); *People v. Loucks*, 481 N.E.2d 1086, 1087 (Ill. App. Ct. 1985) ("Weaving within the lane of traffic in which a vehicle is traveling provides a sufficient basis for an investigatory stop of a motor vehicle, and . . . the evidence was undisputed that the vehicle the defendant was driving was weaving within its own lane of travel continuously for a distance of about two blocks."); *State v. Brown*, 332

Finally, Defendant argues that the trial court abused its discretion by introducing the community caretaker doctrine after the testimony and without the doctrine being raised by any of the parties. Defendant argues that this was a violation of “recognized rules of law or practice” but does not say which rule of law or practice was violated. This basically boils down to an argument that the trial court abused its discretion by applying the law, even though nobody argued that specific law. Throughout the suppression hearing, Corporal Gaul testified that his intention was to conduct a welfare check on the driver because the Defendant’s erratic driving made him concerned for the safety of the driver and the safety of other drivers on the highway. This Court agrees with the court below that the trial “court would have to ignore the testimony to conclude that the Community Caretaker Doctrine was not the basis for the stop.”²⁶ Therefore, the trial court did not abuse its discretion in applying the community caretaker doctrine.

S.W.3d 282, 287 (Mo. Ct. App. 2011) (“Defendant’s weaving within his lane and twice driving on the center line of the highway within a four-mile stretch provided Deputy Johnson with sufficient grounds to stop Defendant’s vehicle to investigate whether its driver might be impaired.”); *State v. Bailey*, 624 P.2d 663, 664 (1981) (“We now hold . . . that the observation of a vehicle weaving within its own lane for a substantial distance gives rise to probable cause to believe that the driver is driving under the influence of intoxicants and justifies a stop for further investigation.”).

²⁶ Court of Common Pleas E-mail Ruling Denying Tracey West’s Motion to Suppress, January 9, 2015 (Exhibit D to Appellant’s Opening Brief).

CONCLUSION

For the foregoing reasons, the decision of the Court of Common Pleas denying Defendant's Motion to Suppress is **AFFIRMED**.

/s/ Charles E. Butler
Judge Charles E. Butler