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IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

MARK WAYNE GADDY,	)	**NOT FOR PUBLICATION**
Appellant,	)	
v.	)	**Case No. F-2022-101**
STATE OF OKLAHOMA,	)	
Appellee.	)	

SUMMARY OPINION

(Filed Nov. 16, 2023)

HUDSON, VICE PRESIDING JUDGE:

Appellant, Mark Wayne Gaddy, was convicted in a bench trial in the District Court of Pontotoc County, Case No. CF-2019-269, of Trafficking in Illegal Drugs, After Conviction of Two or More Felonies, in violation of 63 O.S.Supp.2019, § 2-415. The Honorable C. Steven Kessinger, District Judge, presided at trial and sentenced Gaddy to twenty years imprisonment and a fine of $500.00. Judge Kessinger further ordered credit for time served and imposed various costs and fees.

Gaddy now appeals and raises the following proposition of error before this Court:

I. THE TRIAL COURT COMMITTED FUNDAMENTAL ERROR IN DENYING APPELLANT'S MOTION TO SUPPRESS AND ADMITTING EVIDENCE WHICH WAS THE FRUIT OF AN UNCONSTITUTIONAL SEARCH AND SEIZURE.

After thorough consideration of the entire record before us on appeal, including the original record, transcripts, exhibits and the parties' briefs, we find no relief is required under the law and evidence. Appellant's judgment and sentence is **AFFIRMED**.

In his sole proposition, complains in this appeal that his conviction should be reversed and remanded to the district court with instructions to dismiss because the methamphetamine recovered from the car he was driving was discovered pursuant to an illegal detention and subsequent search by police.[1]

Appellant's objections below preserved this issue for review on appeal. "We review the trial court's ruling on a motion to suppress for an abuse of discretion." *Mason v. State*, 2018 OK CR 37, ¶ 17, 433 P.3d 1264, 1270. "An abuse of discretion is an unreasonable or arbitrary action made without proper consideration of the relevant facts and law – a clearly erroneous conclusion and judgment, clearly against the logic and effect of the facts." *Fuentes v. State*, 2021 OK CR 18, ¶ 10, 517 P.3d 971, 974-75 (citing *Neloms v. State*, 2012 OK CR 7, ¶ 35, 274 P.3d 161, 170). We defer to the trial court's findings of fact unless they are not supported by

[1] Appellant claimed the car belonged to his Aunt.

"competent evidence" and are therefore "clearly erroneous." *Id.* Any legal conclusions made from those facts will be reviewed *de novo. Id.*

Upon review, we find that: (1) the initial stop was reasonable pursuant to the officers' community caretaking function; and (2) the extension of the stop, which led to Appellant's consent to search the car, was based on a reasonable suspicion of illegal activity.[2]

An individual's right to be free from unreasonable searches and seizures is protected by both the United States and Oklahoma Constitutions. U.S. Const. Amend. IV; Okla. Const. Article II, Section 30. A seizure occurred in this case when Allen Police Officer Jeff Chambers stopped Appellant to perform a "welfare check." *See Fuentes*, 2021 OK CR 18, ¶ 11, 517 P.3d at 975 ("It is well-established that a traffic stop is a seizure under the Fourth Amendment."). We therefore must ask "whether the seizure met the constitutional requirement of reasonableness." *Coffia v. State*, 2008 OK CR 24, ¶ 10, 191 P.3d 594, 597 (quoting *State v. Elienbecker*, 464 N.W.2d 427, 429 (Wis.App.1990)). This Court employs the "totality of the circumstances" test to determine the reasonableness of a detention under the Fourth Amendment. *Fuentes*, 2021 OK CR 18, ¶ 11, 517 P.3d at 975. Reasonableness here, however, must be determined in light of the fact that Officer Chambers initiated the stop to carry out a welfare check under the community caretaker function of the police.

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[2] Appellant does not challenge on appeal the voluntariness of his consent to search.

Coffia, 2008 OK CR 24, ¶ 10, 191 P.3d at 597. "A community caretaker action is one that is totally divorced from the detection, investigation or acquisition of evidence relating to the violation of a criminal statute." *Id.* (quoting *Elienbecker*, 464 N.W.2d at 429 (internal citation omitted)). It is thus not an investigative *Terry*[3] stop that requires a reasonable suspicion of criminal activity. *Id.* Instead, reasonableness in a community caretaker scenario "is determined by balancing the public need and interest furthered by the police conduct against the degree of and nature of the intrusion upon the privacy of the citizen." *Id.*

Employing the totality of the circumstances test in this case, we find Officer Chambers was reasonably acting in his community caretaker capacity when he stopped the car driven by Appellant to conduct a welfare check on the female passenger traveling with him. The specifics of the anonymous tipster's report provided through dispatch, taken together with the deputy's corroborating observations of the car, presented a sufficient indication of reliability and justified the initial stop to determine whether the female passenger needed help or medical care. The initial stop of Appellant's car for a welfare check was thus reasonable pursuant to the officers' community caretaking function. The stop was minimally intrusive and only meant to adequately ensure that the female passenger, subsequently identified as Kalyna Johnson, was in fact alright. *See Coffia*, 2008 OK CR 24, ¶¶ 7-13, 191 P.3d at

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[3] *Terry v. Ohio*, 392 U.S. 1 (1968).

596-98. The public interest in effecting the welfare check outweighed such minimal intrusion.

The officers' actions following the initial stop were likewise reasonable and justified under the community caretaker exception. It is a standard police practice to request a driver's license and insurance. *See id.*, 2008 OK CR 24, ¶ 11-13, 191 P.3d at 597-98. Further, Officer Chambers' request that Appellant move his car a short distance was reasonable given that his car was blocking public access to the gas pumps at the gas station he pulled into when stopped. Ms. Johnson's welfare had yet to be assessed at this time. The welfare check was thus still ongoing, and these minor intrusions were reasonable under the Fourth Amendment. *See id.*, 2008 OK CR 24, ¶ 12, 191 P.3d at 598 ("public interest in asking for [a] license . . . outweigh[s] the minimal intrusion involved and passe[s] the Fourth Amendment test of reasonableness.").

Officer Chambers' subsequent request that Appellant exit the car was also a reasonable and appropriate community caretaker action. This action separated Appellant and Ms. Johnson and gave the other officer present at the scene, Officer Dyllan Brown, the opportunity to interact with Johnson privately and assess her welfare. At this time, the officers only had confirmation that Ms. Johnson was conscious. This intrusion was minimal and reasonable to insure Johnson's well-being. *See id.*, 2008 OK CR 24, ¶ 13 n.6, 191 P.3d at 598 n.6 ("[A] public interest [is] served by questioning individuals separately when checking their welfare to insure one is not being held against her will.").

Officer Chambers' observations of Appellant thereafter, while the welfare check was still ongoing, resulted in a reasonable suspicion of illegal activity which allowed Chambers to extend the stop beyond the welfare check. *See State v. Roberson*, 2021 OK CR 16, ¶ 7, 492 P.3d 620, 622 ("police may continue to detain a defendant if the officer develops reasonable suspicion that a crime is being committed") (citations omitted); *United States v. Kitchell*, 653 F.3d 1206, 1219 (10th Cir. 2011) ("[R]easonable suspicion is not, and is not meant to be, an onerous standard."); *United States v. Hunnicutt*, 135 F.3d 1345, 1349 (10th Cir. 1998) ("Police officers need not close their eyes to suspicious circumstances."). Appellant's behavior and the relevant circumstances provided the reasonable suspicion necessary to justify extending the detention beyond the scope of the welfare check and ultimately obtain his voluntary consent to search the car. We thus find no Fourth Amendment violation occurred.

Based upon the totality of the circumstances presented here, Officer Chambers was reasonably acting in his community caretaker capacity when he stopped Appellant to conduct a welfare check. Appellant's exhibited behavior during the ongoing welfare check raised a reasonable and articulable suspicion of illegal activity which allowed Chambers to extend the stop for further investigation and obtain Appellant's consent to search the car. *See Hunnicutt*, 135 F.3d at 1349; *State v. Paul*, 2003 OK CR 1, ¶ 3, 62 P.3d 389, 390. The trial court did not abuse its discretion when it denied Appellant's motion to suppress. Appellant's sole proposition of error is denied.

DECISION

The Judgment and Sentence of the District Court is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2023), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM
THE DISTRICT COURT
OF PONTOTOC COUNTY
THE HONORABLE C. STEVEN KESSINGER,
DISTRICT JUDGE

APPEARANCES AT TRIAL	**APPEARANCES ON APPEAL**
TOMMY ADLER ATTORNEY AT LAW 9211 LAKE HEFNER PARKWAY SUITE 104 OKLAHOMA CITY, OK 73120 COUNSEL FOR DEFENDANT	NICOLLETTE BRANDT OKLA. INDIGENT DEFENSE SYSTEM P.O. BOX 926 NORMAN, OK 73070-0926 COUNSEL FOR APPELLANT
NICHOLAS THURMAN ASST. DISTRICT ATTORNEY PONTOTOC COUNTY 105 WEST 13TH STREET ADA, OK 74820 COUNSEL FOR THE STATE	JOHN M. O'CONNOR OKLA. ATTORNEY GENERAL MICHEL A. TRAPASSO ASST. ATTORNEY GENERAL 313 N.E. 21ST STREET OKLAHOMA CITY, OK 73105 COUNSEL FOR APPELLEE

OPINION BY: HUDSON, V.P.J.
ROWLAND, P.J.: DISSENT
LUMPKIN, J.: CONCUR IN RESULTS
LEWIS, J.: CONCUR
MUSSEMAN, J.: CONCUR

ROWLAND, P.J. DISSENTING:

I must respectfully dissent to the majority's opinion because 1 find it an overly expansive application of the community caretaking function of police. In my view, the initial stop of Gaddy's vehicle was not valid under that doctrine, and, as the parties concede, neither was it supported by reasonable suspicion or probable cause as an ordinary criminal investigatory stop.

Allen Police Officers Jeff Chambers and Dyllan Brown testified at the preliminary hearing. Officer Chambers testified that about 3:10 in the afternoon on June 18, 2019, he stopped a vehicle for a welfare check based upon information relayed to his department from the Ada Police Department. He testified that his dispatcher gave him no information about the nature of any threat to any person or the need to render any aid to any person, nor did he receive any information about who might have placed the original call to the Ada Police Department. Once he verified the vehicle by make, color, and tag number, he pulled the driver over. When he initiated this stop, he did not witness anyone inside the vehicle appearing to be passed out or asleep, or in any other way needing assistance.

Officer Brown testified that on this date, he was in a separate police car, also watching for a certain vehicle coming from Ada. He stated that the original call to the Ada Police Department was that a woman was passed out in a car in the Wal Mart parking lot, and that before Ada officers could arrive "the male suspect came out running towards the car and left the scene" and "the car left Walmart and was headed towards Allen." He did not perform the vehicle stop but arrived shortly after Officer Chambers pulled the vehicle over. On cross-examination, he was asked if the information from Ada was that a woman "was asleep in a vehicle" and his reply was "yes." He was not able to observe the occupants of the vehicle prior to the stop, and he had no information about who placed the original call to the Ada Police.

I am sympathetic to officers who in the performance of their duties must often make split-second decisions based on incomplete information, but the problem in the present case is that at the point of the stop there were wholly insufficient facts to justify the seizure. The officers had no information about the calling party, and thus no information about the caller's truth and veracity. Once the vehicle came into sight, neither of them saw anything indicating that any person in the car was in need of assistance or in any way corroborating any of the information other than that a certain color and make of vehicle with a certain tag was headed toward Allen.

Having employed the community caretaker doctrine in only one published opinion, this Court has

never established what level of corroboration is required when an anonymous caller reports that a person in a moving vehicle is in need of assistance. *See Coffia v. State*, 2008 OK CR 24, 191 P.3d 594 (A police officer requesting and verifying one's driver's license while assisting a disabled motorist is reasonable as a community caretaker function of police.). However, the United States Court of Appeals for the Tenth Circuit requires "specific and articulable facts" indicating a need for police intervention to justify a seizure under the community caretaker function.

> Like an investigative detention for law enforcement purposes, such a community caretaking detention must be based upon specific and articulable facts which . . . reasonably warrant [an] intrusion into the individual's liberty. Additionally, the government's interest must outweigh the individual's interest in being free from arbitrary governmental interference. Finally, the detention must last no longer than is necessary to effectuate its purpose, and its scope must be carefully tailored to its underlying justification. Once the officer has completed the inquiry necessary to satisfy the purpose of the initial detention, he or she must allow the person to proceed unless the officer has a reasonable suspicion of criminal conduct.

United States v. Garner, 416 F.3d 1208, 1213 (10th Cir. 2005) (internal quotes and citations omitted).

I would not go so far as the Tenth Circuit has in requiring the same level of corroboration as is needed

in criminal investigations, but some level of independent corroboration must be required. Allowing police to stop a vehicle based solely on its tag number and description, and only the most general and vague of information from an anonymous party on an unrecorded non-emergency phone line, without independently verifying even one detail tending to show a need for police protection or assistance, is too low a bar. I believe it represents an improvident expansion of the community caretaker function and I must respectfully dissent from the majority's holding.