

STATE OF CONNECTICUT *v.* NICOLAS A. MARCIANO, AC

46753

Judicial District of Tolland at G.A. 19

Criminal; Whether Trial Court Properly Held That Community Caretaking Exception Did Not Apply in Granting Motion to Suppress Evidence on Ground of Unlawful Seizure; Whether Defendant Was Seized Under Fourth Amendment. On May 9, 2022, at approximately 1:30 a.m., two troopers with the Connecticut State Police were on routine patrol in the vicinity of Route 44 in Mansfield when they spotted a motor vehicle parked in an unlit section of a closed Cumberland Farms convenience store parking lot. The troopers pulled their cruiser into the lot, parked approximately 40 to 50 feet from the vehicle with the cruiser's front facing the driver's side, and illuminated the vehicle with the cruiser's "takedown lights." One of the troopers exited the cruiser and approached the vehicle, which was not turned on and in a parked position at the time. The trooper was holding a flashlight that he turned in a circular motion as a signal to the driver of the vehicle to roll down his window. The defendant was in the driver's seat of the vehicle and, when he saw the trooper, turned on the vehicle in an attempt to roll down his window. When the defendant could not roll down his window, he partially opened the driver's side door. The trooper observed once the defendant opened the door that he could smell alcohol and that the defendant's speech was slurred. The trooper also observed that there was damage to the rear driver's side tire of the vehicle. The defendant represented to the trooper that he did not own the vehicle and was waiting for a friend to pick it up, and evidence later indicated that the defendant had been parked for some time with the vehicle off when the trooper approached him. The troopers asked the defendant to exit the vehicle and performed field sobriety tests, after which they arrested him and charged him with operating a motor vehicle under the influence. The defendant filed a motion to suppress the evidence of the OUI charge on the ground that he was unlawfully seized when the takedown lights were shone at him and the approaching trooper used a flashlight to signal at him. The trial court agreed and granted the defendant's motion to suppress. The trial court determined that the troopers' uses of light on the defendant would cause a reasonable person to believe that they were not free to leave. The trial court also concluded that the troopers did not have a reasonable and articulable suspicion of criminal activity where "[t]he defendant was merely present in a dark parking lot" in a turned off, legally parked vehicle and that the defendant did not turn on the car, which was the basis for the operation element of the OUI charge, until after he was approached by the trooper. The trial court further rejected the state's

reliance on the community caretaking exception to the warrant requirement, which provides that police officers may conduct warrantless searches and seizures under limited circumstances in which they are acting in the interests of public safety as opposed to criminal law enforcement. The trial court noted on this front that there was nothing about the vehicle that indicated a need for assistance or a potential public safety concern. The state could not proceed on the OUI charge without the evidence, and the state filed a motion to dismiss the charge and a motion for permission to appeal under General Statutes § 54-96 and Practice Book § 61-6 (b), which the trial court granted. This is the state's appeal from the trial court's judgment of dismissal. The Appellate Court will decide whether the trial court properly granted the defendant's motion to suppress where the state argues that the state police were acting in their community caretaking capacity at all relevant times, including when they discovered evidence of operating a motor vehicle under the influence of alcohol. The Appellate Court will also decide, in the alternative, whether the trial court properly concluded that the state police seized the defendant, under the fourth amendment to the United States constitution and article first, § 7, of the Connecticut constitution, where the state argues that (1) the troopers parked their cruiser forty to fifty feet from, and perpendicular to, the defendant's car without blocking it in any way; (2) before exiting, the troopers illuminated the defendant's car with their cruiser's spotlights for officer safety; and (3) one of the troopers approached the defendant's car on foot while using a flashlight to direct him to roll down the window, at which point the defendant opened his car door and the troopers smelled alcohol.
