

STATE OF VERMONT  
CHITTENDEN COUNTY, SS

OCT 22 2009

VI District Court  
Chittenden County

State of Vermont

v.

Justin O. Cast, Defendant

Unit 2, Chittenden Circuit  
DISTRICT COURT OF VERMONT  
Docket No. 1885-5-09 Cncr  
211-5-09 Cncs

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER  
REGARDING DEFENDANT'S MOTION TO SUPPRESS AND  
DISMISS IN THE CRIMINAL AND CIVIL SUSPENTION CASES**

This matter came before the court on defendant's Motions to Suppress and Dismiss in the criminal and civil suspension cases. Deputy State's Attorney Paul Finnerty appeared on behalf of the State. The defendant was present with his counsel, Jason J. Sawyer, Esq.

The defendant filed a Preliminary Memorandum of Law in support of numerous arguments for suppression and dismissal. In a supplemental Memorandum of Law, after the presentation of evidence, the defendant has narrowed the central issue for determination to the issue of reasonable basis for the stop. Specifically, whether the community caretaking exception applies to the facts of this case. Based on the credible evidence the court makes the following Findings of Fact relative to this issue.

**Findings of Fact**

1. ~~Sergeant Wright is employed by the Burlington Police Department since 2001.~~  
She is certified by the Vermont Criminal Justice Training Council and is certified in the use of the DataMaster and DataMaster-dmt.
2. On May 10, 2009 at approximately 4:30 a.m. she was on duty when she observed a vehicle in a UVM parking lot at the intersection of Prospect and

Main Streets. There are rarely any motor vehicles in this parking lot at this time of morning.

3. While observing the vehicle in the parking lot, Sergeant Wright saw the operator drive in a circle two times and get out of the motor vehicle three times and look at his vehicle.<sup>1</sup> It is not illegal to drive in a circle in a parking lot.
4. The operator was subsequently identified as the defendant.
5. Approximately five minutes after observing the defendant, Sergeant Wright pulled into the parking lot and drove up to the driver's side of the motor vehicle. She did not block the defendant from exiting the parking lot. The defendant was in the driver's seat, the seat was reclined, and he appeared to be sleeping. She had to rap on the window to wake him up.
6. The defendant sat up and opened the door; he said he had been sleeping. Sergeant Wright could smell a very strong odor of intoxicants. Full and empty beer cans were in the car. Defendant fumbled inside the car, his pockets, his billfold and the glove compartment before retrieving his license and registration. He identified the car as a rental. The defendant pointed out that the keys were on the passenger seat and not in the ignition.

#### Conclusions of Law

When Sergeant Wright pulled into the parking lot she had not received any information from any source about this vehicle, or any information of any criminal wrongdoing. Sergeant Wright had not observed any illegal driving or erratic operation. Thus, there was no reasonable suspicion of criminal wrongdoing at the time of the stop. The parties do not dispute that the stop was a seizure and the court so concludes. "This does not mean, however, that suspicion of

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<sup>1</sup> Sergeant Wright ultimately found that there was something wrong with the defendant's motor vehicle.

criminal conduct is the only possible justification for a seizure. Indeed we have recognized in other contexts that a seizure can be reasonable even in the absence of such suspicion.” *State v. Campbell*, 173 Vt. 575, 576 (2001) (citing *State v. Pierce*, 173 Vt. 151 (2001)). The seizure in this case is analyzed under the community caretaking responsibility of law enforcement officers.

“[O]fficers without reasonable suspicion of criminal activity are allowed to intrude on a person’s privacy to carry out ‘community caretaking’ functions to enhance public safety.” *State v. Marcello*, 157 Vt. 657, 658 (1991) (mem.). “A police officer acting under the community caretaking doctrine must have ‘specific and articulable facts’ that led him to reasonably believe the defendant was in need of assistance.” *State v. Campbell*, 173 Vt. 575, 576 (2001) (mem.), citing *Marcello*, 157 Vt. at 658. “The key to such constitutionally permissible police action is reasonableness.” *Marcello*, 157 Vt. at 658.

In *Marcello*, a state trooper was told by a motorist that “there’s something wrong with that man” referring to another motorist on the same roadway. *Id.* The *Marcello* Court held that “stopping defendant’s vehicle was a reasonable police response in these circumstances because the police have an essential role as public servants to ‘assist those in distress and to maintain and foster public safety.’” *Id.* Thus, the information provided to the officer by the other motorist was a specific and articulable fact. “Since *Marcello*, the test for the community caretaking exception for a traffic stop has consistently turned on whether there were specific and articulable facts objectively leading the officer to reasonably believe that the defendant was in distress or needed assistance, or reasonably prompted an inquiry in that regard.” *State v. Edwards*, 183 Vt. 584 (2008)(mem.)

In *State v. Campbell*, 173 Vt. 575, 576 (2001) (mem.), the Court found that there was a warranted community caretaking seizure when an officer stopped after observing a motor vehicle

late at night, in a rest area parking lot, on a stormy night, flash its headlights as the officer drove by the motor vehicle.

The Court declined to apply the community caretaking exception to the facts in *State v. Burgess*, 163 Vt. 259 (1995). In *Burgess*, a police officer observed a vehicle on a winter's day in a lawful pull-off area with its engine running and its parking lights on. The officer turned around, pulled behind the vehicle and put his blue lights on. After a few questions, the officer made observations ultimately leading to a D.U.I. prosecution. On appeal, the Court found that there was no objective indication that caretaking was required because the officer had no indication that anything was wrong or any information about the vehicle before stopping it. *Id.* at 262. See also *State v. Jestice*, 2004 VT 65, 177 Vt. 513 (mem.) (police officer who pulled his cruiser nose-to-nose, to a car parked at night in a trailhead parking lot with the engine running and headlights on, essentially blocking its exit, found to be a seizure not justified by suspicion of criminal wrongdoing or community caretaking).

The Court distinguished its holding in *Campbell* from the *Burgess* case by noting that in *Burgess* “[t]here was nothing ... to indicate that defendant was in any type of distress,” here [in *Campbell*] the officer was signaled by the vehicle. *Id.*

In this case, the officer may have acted upon a reasonable instinct that something was odd about a lone motor vehicle was in a parking lot at 4:30 a.m. driving in circles. However, these facts are most analogous to the facts in *Burgess*, 163 Vt. 259. This court must conclude that based on the holding in *Burgess* “there [was] no objective indication that caretaking was required because the officer had no indication that anything was wrong or any information about the vehicle before stopping it.” *Burgess*, 163 Vt. at 262. Accordingly, this court grants the defendant’s Motion to Suppress and Dismiss in the criminal and civil suspension cases.

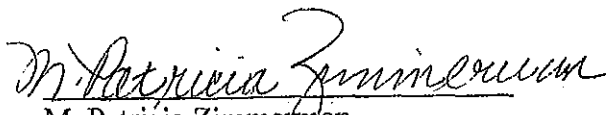
**ORDER**

Defendant's Motion to Suppress and Dismiss in the criminal and civil suspension cases is  
GRANTED.

The criminal case in docket no. 1885-5-09 CnCr is dismissed.

Judgment is entered for the defendant in the civil suspension case in Docket No. 211-5-  
09 CnCs.

Dated at Burlington this 21 day of October, 2009.

  
M. Patricia Zimmerman  
District Court Judge