State of New Hampshire
Supreme Court

NO. 2001-495

2002 TERM

FEBRUARY SESSION

STATE OF NEW HAMPSHIRE

v.

DANIEL BOYLE

RULE 7 APPEAL FROM FINAL DECISION
OF ROCKINGHAM COUNTY SUPERIOR COURT

BRIEF OF DEFENDANT, DANIEL BOYLE

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QUESTION PRESENTED

1. Officer Walsh seized the defendant, Daniel Boyle, when the Officer came upon him idling in the middle of the road in the middle of the night in Rye, New Hampshire, after he gentlemanly dropped off a drunk woman at her home and was waiting for her "I'm OK" signal before leaving. The community caretaking exception to the warrant requirement of Pt. I, Art. 19 of the New Hampshire Constitution, and the Fourth Amendment to the United States Constitution, requires that the police objectively believe there is a need for their assistance, that they can objectively associate that need with the place to be seized, and that the seizure is not primarily motivated by an investigatory intent. Did the court err in denying Mr. Boyle's motion to suppress evidence of his own drinking and lack of valid license by holding that the seizure was valid when the state cannot show any of the elements of the community caretaking exception?

STATEMENT OF FACTS AND STATEMENT OF THE CASE

At about 1:00 in the morning on June 2, 2000, Officer Kevin Walsh was driving down Sagamore Road in Rye, New Hampshire, on his routine uniformed patrol in his marked Rye Police Department cruiser. *Trn.* at 5. He saw a car idling in the middle of the road in the residential neighborhood. As he approached, the car pulled over to let him pass, so that the car was half in the travel lane, and half off the road. *Trn.* at 5-6.

Officer Walsh pulled his cruiser beside the car, rolled down his passenger-side window, and asked the car's sole occupant if he was broken down. *Trn.* at 7. Daniel Boyle, the defendant here, answered that everything with him was fine, that he had just dropped off a woman at her home, that she was drunk, that she had gone inside to join her boyfriend, and that Mr. Boyle was waiting for a signal from her indicating she was settled and he could leave. *Trn.* at 13-14.

Officer Walsh gave a variety of reasons for commencing an investigation. He testified that he found the story "unusual," *Trn.* at 8; that he "didn't know if there was a problem, a safety issue, maybe there was a medical issue," *Trn.* at 11; that he had a concern for the woman who had been dropped off, *Trn.* at 17; that he "was looking to inquire further," *Trn.* at 17; and that he "wanted to talk to [Mr. Boyle] further." *Trn.* at 19.

Whatever his reason, Officer Walsh backed up, pulled behind Mr. Boyle's car, and illuminated his blue lights, his takedown lights, and his spotlight, which he testified is a common procedure during motor vehicle stops. *Trn.* at 9. Officer Walsh then approached Mr. Boyle on foot, noticed a smell of alcohol, and eventually arrested Mr. Boyle.

During a suppression hearing, Officer Walsh testified on direct examination that his initial conversation with Mr. Boyle went only so far as the fact that Mr. Boyle was not in need of assistance and that he had dropped off a woman. *Trn.* at 7. He testified that he learned the rest

of the story – the woman was drunk, there was a boyfriend inside, Mr. Boyle was waiting for a signal – only after he had pulled up behind Mr. Boyle's car, turned on the lights, and had an opportunity for further conversation with Mr. Boyle.

On cross examination, however, Officer Walsh admitted that, in accord with his contemporaneous written incident report, he had learned the whole story – not just why Mr. Boyle was there, but what he was doing there and what little he knew of the situation inside the house – during the initial contact when Mr. Boyle's car and Officer Walsh's cruiser were situated side-by-side. *Trn.* at 16-17.

Although he testified that he was concerned that there might be the possibility of a domestic problem inside the woman's house, Officer Walsh never investigated the situation. *Trn.* at 15-16.

Officer Walsh also testified that part of his purpose in turning on the blue lights and other illumination was to prevent Mr. Boyle from leaving the scene, and that had Mr. Boyle driven away Officer Walsh would have given chase. *Trn.* 18-20.

After his arrest, Mr. Boyle requested suppression of all the evidence against him based on his state and federal constitutional rights against unreasonable searches and seizures. The Rockingham County Superior Court (*Richard Galway*, J.) held a hearing, and found that Mr. Boyle had been seized. The court also found that the seizure was within the "community caretaking" exception to the warrant requirement (variously called the "motorist assist," "emergency aid," or "health and safety" exception). Mr. Boyle was later convicted (*Gillian L. Abramson*, J.) of driving while being certified as an habitual offender (felony) and disobeying an officer (misdemeanor), and acquitted of driving while intoxicated (misdemeanor), and sentenced accordingly.

SUMMARY OF ARGUMENT

Mr. Boyle first acknowledges that police have a legitimate community caretaking role, but notes that extending too far an exception to the warrant requirement based on this function is counter-productive to society's best interests and in violation of citizens' constitutional rights.

Mr. Boyle then quotes a recent decision of this court listing the three elements of the community caretaking exception. He argues that he should not have been seized because he was not in need of assistance, any concern held by the police was directed elsewhere, and that the police seized him out of an investigatory rather than a caretaking concern.

Mr. Boyle notes that he was, in fact, seized. He then argues that there was, however, no articulable basis for the seizure, and that it was therefore unlawful.

Finally Mr. Boyle requests that this court reverse his convictions.

ARGUMENT

I. Community Care Exception to the Warrant Requirement

A. Police Have Protective Function

It is undeniably true that part of a police officer's job is to protect the life and property of all members of the community. It is also undeniable that police officers come across crime, or evidence of it, while serving their protective function, and it would be unreasonable to deny them access to it merely because they discovered it outside of a formal investigation.

On the other hand, it would be in derogation of citizens' rights against unfettered governmental access to their things if police officers could merely stand behind their duty to protect anytime the government desired to use evidence that was otherwise difficult to obtain. *See, e.g., State v. Houser*, 622 P.2d 1218 (Wash. 1980) (claiming community caretaking, police impounded car when in fact they wished to conduct inventory search to investigate unsubstantiated suspicion that car was stolen).

Thus, it is widely recognized that an exception to the warrant requirement for community caretaking (variously called the "motorist assist," "emergency aid," or "health and safety" exception) must be carefully structured and strictly enforced. It must be restricted to those situations in which a police officer is truly acting in a public safety role, but not so open as to allow the role to become a ruse for police investigations. *See e.g., Servis v. Commonwealth*, 371 S.E.2d 156 (Va.App. 1988) (*Benton*, J., dissenting).

For instance, it would not be sensible to create law that requires the police to follow constitution-based rules regarding search and seizure when they are investigating a crime, but allows them to ignore those rules when they are protecting the community. *Camara v. Municipal*

Court, 387 U.S. 523, 530 (1967) ("It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior."). For the citizen, both those involved in crime and those with clean hands, the result is the same – an agent of the state pawing them or their stuff.

Likewise, it would not be good policy to discourage members of the public from requesting police assistance for emergencies by construing that request as an invitation to search. *See e.g.*, *United States v. Erickson*, 991 F.2d 529 (9th Cir. 1993) (police went to home to investigate possible burglary, but then discovered marijuana plants not in plain view).

Similarly, it would not be wise to discourage members of the public from lending a hand to those in need by construing their offer of assistance as a consent to search when the police also come to help. *See, e.g., State v. Godwin*, 826 P.2d 452 (Idaho 1992) (Godwin and friend, in separate cars, traveling together; friend's car stopped by police for equipment malfunction; Godwin pulls over to wait for friend; police question Godwin and discover evidence of crime).

If situations such as these are allowed to result in legitimate police seizures, the community care exception swallows the fourth amendment rule. If a person can be seized whenever the police want to make sure everything is alright, there is no end to what the police can do. The entire construct of search and seizure law would have a great big hole in it, because the police are *always* interested in public safety. *Camara v. Municipal Court*, 387 U.S. 523 (1967) (no public interest exception to the warrant requirement).

The issue was well described by Judge Duggan in his recent dissent in *State v. Heidi Lee Seavey*, __ N.H. __ (decided Dec. 19, 2001).

> "While the warrant requirement of Part I, Article 19 and the Fourth Amendment protects against indiscriminate government searches as police conduct criminal investigations, in our contemporary society police perform a broad range of duties. Separate and apart from conducting criminal investigations, each and every day police are involved in community caretaking functions – helping stranded motorists, returning lost children to anxious parents, assisting and protecting citizens in need – totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute. As part of their community caretaking function, police respond to emergencies when there is an immediate need for their assistance in protecting life or property. This need to protect or preserve life or avoid serious injury justifies some entries that would otherwise be illegal absent the emergency.

State v. Seavey, __ N.H. at __ (*Duggan*, J., dissenting) (quotations and citations omitted). *See also, Cady v. Dombrowski*, 413 U.S. 433, 441 (1973) (community caretaking function is "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute").

B. New Hampshire Law Protects Against Unfettered Seizures

For these reasons, New Hampshire law contains protections, also aptly summarized in the *Seavey* dissent.

> [C]ourts have adopted the following standard for applying the emergency aid exception. The State must show: (1) the police have objectively reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property; (2) there is an objectively reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched; and (3) the search is not primarily motivated by intent to arrest and seize evidence.

Seavey, __ N.H. at __ (*Duggan*, J., dissenting) (quotations and numerous citations omitted).

All the previously decided New Hampshire cases fit neatly into the later-listed *Seavey* elements. In *State v. Brunelle*, 145 N.H. 656 (2000), the motorist clearly needed assistance as his car was being pushed, and the state trooper was required by statute to request his license, making

it unlikely that the request was motivated by anything other than the statute. In *State v. Psomiades*, 139 N.H. 480 (1995), the defendant's purse was seized by the police to assist in protecting it after she was removed from her car because she was drunk. Accordingly, this court affirmed the convictions in *Brunelle* and *Psomiades*.

In *State v. Blake*, 146 N.H. 1 (2001), an anonymous caller reported that the defendant was seen squealing his tires. As the police did not witness the incident, the emergency had lapsed. In addition, the police were most obviously motivated by an intent to arrest him. Thus, this court reversed the conviction in accord with the elements now contained in *Seavey*.

II. Mr. Boyle Should Not Have Been Seized

The facts of Mr. Boyle's case show that the State cannot meet any of the three elements of the community caretaking exception.

A. Officer Walsh Had No Objectively Reasonable Grounds to Believe There Was an Immediate Need for His Assistance

When Officer Walsh happened upon Mr. Boyle, he saw a car, idling, in the middle of the road. Officer Walsh "made an assumption that he had a mechanical problem." *Trn.* at 16. Doubtlessly there were objective grounds for the Officer to pull alongside Mr. Boyle and inquire whether he needed assistance.

His inquiry revealed that Mr. Boyle was fine, that he had just dropped off a woman at her home, that she was drunk, that she had gone inside to join her boyfriend, and that Mr. Boyle was waiting for a signal from her indicating she was settled and he could leave. There is nothing in Mr. Boyle's story that could lead a reasonable person to believe that Mr. Boyle needed further help. If he were concerned about another car coming down the road and colliding with Mr. Boyle's, *Trn.* at 8, Officer Walsh would have been justified in suggesting that Mr. Boyle move his car off the roadway. Even if, as Officer Walsh first testified, Mr. Boyle initially told only half the story – that he was not in need of assistance and that he had dropped off a woman – nothing in the half could give Officer Walsh an objective indication that further assistance was necessary.

Thus, after the initial contact with Mr. Boyle, Officer Walsh's duty to render assistance to stranded motorists was discharged. The State has thus failed to meet the first prong of the community caretaking exception; there was no objectively reasonable grounds to believe that there was an immediate need for further police assistance to protect life or property.

B. Office Walsh Had No Objectively Reasonable Basis, Approximating Probable Cause, to Associate the Emergency with the Place Seized

Mr. Boyle's story would give a reasonable person concern regarding the welfare of the woman recently dropped off. The story raises questions: What was going on inside? What was Mr. Boyle's relationship with the woman? Would that relationship cause a boyfriend, presumably inside the house, any angst? Might there be an untoward domestic situation inside the house as a result of Mr. Boyle's gentlemanly ride or presence? In fact, these questions were the nature of Officer Walsh's interest; he testified that his concern was "is the female okay or not?" *Trn.* at 17.

But a reasonable response to a concern for the woman is to turn one's attention to the inside of the house, and Officer Walsh could have taken any one of several legitimate courses of action. He could have stayed in the vicinity for a few minutes to make sure he didn't hear any screams or broken windows. He could have driven away and circled the block a few times. He could have gone to the house and directly checked on the woman, although he "felt if I knocked on the door I would probably start a domestic." *Trn.* at 16.

In any event, Officer Walsh's only reasonable concern after getting half or all of Mr. Boyle's story was for the woman inside the house. There was no objective basis to connect the possible problem inside with Mr. Boyle parked outside. Accordingly the State has failed to associate the possible emergency with the place it seized, and cannot meet the second prong of the community caretaking exception.

C. Officer Walsh's Seizure of Mr. Boyle Was Primarily Motivated by an Intent to Arrest and Seize Evidence

Although he professed a concern for the woman in the house, Officer Walsh did nothing to follow-up on her possible problems. *Trn.* at 15-16. Instead, he backed up, turned on his blue lights, and seized Mr. Boyle. This suggests that Officer Walsh may have been primarily motivated by an interest in Mr. Boyle, but that he had no evidence against Mr. Boyle without a further investigation.

The State has thus failed to show that the seizure was not primarily motivated by an intent to arrest and seize evidence, and that the intent it was "totally divorced" from Officer Walsh's community caretaking role.

III. Mr. Boyle was Seized

Whether a person is "seized" by the police is determined by whether, "in view of all the circumstances . . . a reasonable person would have believed that he was not free to leave." *State v. Quezeda*, 141 N.H. 258, 259 (1996) (quotations and citations omitted). A reasonable person would feel constrained from leaving when there is a sufficient "show of authority." *Id.*; *Florida v. Bostick*, 501 U.S. 429, 434 (1991). The blue lights of a marked police car are a show of authority demonstrating seizure. *State v. Oxley*, 127 N.H. 407, 411 (1985).

Mr. Boyle was plainly seized at the moment Officer Walsh pulled in behind him and turned on his cruiser's blue lights. Officer Walsh, who was dressed in his uniform and driving a marked police car, testified he would have chased Mr. Boyle had he driven away. The lower court thus correctly found that Mr. Boyle was seized. *Order on Motion to Suppress*, N.O.A. at 18, 21.

IV. Police Need Reasonable Suspicion Based on Articulable Facts to Detain a Motorist for Investigatory Purposes

A. Law Requires Articulable Suspicion

This court has held that

> "A law enforcement officer is permitted to temporarily detain a suspect for investigatory purposes on grounds less than probable cause if the officer has a reasonable suspicion based on 'specific and articulable facts which, taken together with rational inferences from those facts,' leads him to believe that the person detained has committed or is about to commit a crime."

State v. Jaroma, 137 N.H. 562, 566 (1993), *quoting State v. Kennison*, 134 N.H. 243, 246-47, (1991).

Thus, the police must have articulable suspicion, specifically accruing against the person detained, that that person is a criminal.

Any evidence gathered during a stop not supported by articulable suspicion against the detainee is tainted by the violation of state and federal constitutional rights against unreasonable searches and seizures, and must be suppressed. *State v. Webber*, 141 N.H. 817 (1997); *United States v. Sharpe*, 470 U.S. 675, 682 (1985).

B. Officer Walsh Had No Articulable Suspicion to Seize Mr. Boyle

Having failed to meet any of the elements of the community caretaking exception, the State is required to show that it had articulable suspicion to seize Mr. Boyle. The various explanations offered by Officer Walsh, however, were that he found the story "unusual," *Trn.* at 8; that he "didn't know if there was a problem, a safety issue, maybe there was a medical issue" *Trn.* at 11; that he had a concern for the woman who had been dropped off, *Trn.* at 17; that he "was looking to inquire further," *Trn.* at 17; and that he "wanted to talk to [Mr. Boyle] further."

Trn. at 19.

None of these constitute articulable suspicion. At most they are hunches.

Mr. Boyle's situation is similar to *Barrett v. Commonwealth*, 462 S.E.2d 109 (Va. 1995). There an officer saw a truck driving half on and half off the roadway. As this "seemed odd," a police officer who happened to be driving by used his blue lights to stop Mr. Barrett "to see whether there was a problem." The Virginia Supreme Court held that because there was no articulable basis on which to believe that Mr. Barrett was either engaged in criminal activity or needed assistance, the seizure was not justified.

CONCLUSION

Mr. Boyle was being a gentleman. He gave a fellow human in need of help a ride home and waited for her to let him know she was okay before leaving. For this he suffered the indignity of being seized by the police. The state's action violated Mr. Boyle's federal and state constitutional rights, and also neglected society's best interest. His convictions should be reversed.

Respectfully submitted,

Daniel Boyle,
By his Attorney,

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Dated: February 19, 2002

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REQUEST FOR ORAL ARGUMENT AND CERTIFICATION

Daniel Boyle requests that his counsel he be allowed 15 minutes for oral argument.

I hereby certify that on February 19, 2002, copies of the foregoing will be forwarded to the Office of the Attorney General.

Dated: February 19, 2002

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