Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-143

MARCH TERM, 2020

State of Vermont v. Margaret S. Zarvis*	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 870-7-17 Rdcr
		Trial Judge: Thomas A. Zonay

In the above-entitled cause, the Clerk will enter:

Defendant, who was initially charged with driving under the influence (DUI) but later conditionally pled to an amended charge of negligent operation, appeals from the criminal division's denial of her motion to suppress and dismiss, in which she argued that the stop of her vehicle was unlawful. We reverse.

Neither the facts of this case nor the trial court's findings are in dispute. Because defendant challenges only the trial court's conclusion that the stop of her vehicle was lawful under the community caretaking doctrine, our review is de novo. See State v. Paro, 2012 VT 53, ¶ 2, 192 Vt. 619 (mem.) ("On appeal of a motion to suppress, we review the trial court's legal conclusions de novo and its factual findings for clear error."). During the evening of June 14, 2014, the state trooper who later stopped defendant was dispatched to a convenience store in response to a call from the store clerk stating that a man and a woman were outside the store arguing and slamming car doors. While on route to the store, the officer learned that the man involved in the argument had left on foot and that the woman had left separately in a car, which was identified by a plate number and a description of the vehicle. Shortly thereafter, the officer stopped defendant's vehicle without observing any traffic violations or signs of impairment. Following the stop, however, the officer observed signs of defendant's impairment, and defendant was eventually charged with DUI.

The trial court denied defendant's motion to suppress and dismiss, concluding that although the stop could not be justified based on reasonable and articulable suspicion of criminal activity, it was justifiable under the community caretaking doctrine, which recognizes "that one of the essential roles of police officers is to enhance public safety by assisting those in distress." State v. Button, 2013 VT 92, ¶ 9, 195 Vt. 65. The propriety of a traffic stop based on that doctrine "turn[s] 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, 2008 VT 23, ¶ 8, 183 Vt. 584; see also State v. St. Martin, 2007 VT 20, ¶ 6, 181 Vt. 581 (mem.) (stating that vehicle stops are proper under community caretaking doctrine when officer can particularly describe "a perceived emergency or [an] indication of imminent threat to specific individuals" before effectuating stop). "The key to the constitutional permissibility of such police action is reasonableness." Button, 2013 VT 92, ¶ 9. "We have noted the danger that an expansive community caretaking doctrine presents to individuals' right to privacy and must take care not to allow the exception to devour the requirement of reasonable articulable suspicion." Id. ¶ 20 (quotation omitted). That is why "specific and articulable facts," not conclusory speculations, are required to support a traffic stop under the community caretaking exception. State v. Marcello, 157 Vt. 657, 658 (1991) (mem.).

This Court has allowed community caretaking stops in cases where a defendant or a third party expressly communicated a message to police suggesting that someone was in distress. See State v. Campbell, 173 Vt. 575, 576 (2001) (mem.) (concluding that defendant's act of flashing high beams at marked police cruiser while defendant was parked by information booth on stormy night provided reasonable basis for officer to believe people in car needed assistance); Marcello, 157 Vt. at 657-58 (concluding that officer reasonably believed driver needed assistance when another motorist informed officer that there was "something wrong" with driver).

Noting that the officer testified he stopped her to investigate whether she might have been the perpetrator or victim of domestic assault, defendant argues that the stop was not justified in this instance under the community caretaking doctrine because the officer had not received any report of a physical altercation or harm to either participant during the argument and the parties had separated at the time of the stop. We conclude that the stop was not justified under the community caretaking doctrine, which must be narrowly applied to prevent it from swallowing the general rule that automobile stops must have a reasonable and articulable basis. "In the cases where we have upheld motor-vehicle stops under the community caretaking exception, the law enforcement officers undertaking the stops have done so in response to a perceived emergency or indication of imminent threat to specific individuals." St. Martin, 2007 VT 20, ¶ 6 ("[W]e have been wary of applying the community caretaking exception to cases where the facts lacked indicia of danger or distress."). In denying the motion to suppress, the trial court relied upon Marcello and speculation that defendant conceivably could have been injured during the argument and thus posed some danger to the general public. But we have declined to extend the doctrine to situations such as the instant one "where a defendant's actions might pose some danger to some member of the motoring public at some indefinite time in the future." Id. ¶ 8. The circumstances in Marcello are distinguishable from those in this case. In Marcello, an officer directly received an "excited utterance" from a motorist informing the officer that there was "something wrong" with a person who was currently operating a motor vehicle on the highway. 157 Vt. at 657-58 (upholding stop under community caretaking doctrine based on "a passing driver's 'excited utterance' that another driver needed help"). Under those circumstances, it was reasonable for the officer to investigate the situation to make sure that the driver did not pose a danger to himself or other drivers. Here, in contrast, other than the fact that defendant had been in an argument a few minutes earlier, there was no evidence that she had been injured or was in distress. Defendant and the other person involved in the argument had separated, with defendant driving away. She was operating her

vehicle while obeying traffic laws and without showing signs of impairment, and she made no attempt to seek assistance from the officer.

Reversed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

William D. Cohen, Associate Justice