

TABLE OF CONTENTS

TABLE OF AUTHROITIES	ii
STATEMENT OF ISSUES	1
STATEMENT OF THE CASE	1
STATEMENT OF THE FACTS	1
ARGUMENT	1
I. The Motion Judge was correct in suppressing the firearm seized from the motor vehicle finding that this was not a legitimate exercise of the "caretaking" function of the Springfield Police Department.	
CONCLUSION	4
CERTIFICATE OF COMPLIANCE	5

TABLE OF AUTHORITIES

1. <u>Cady V. Dombrowski</u> , 413 U.S. 433, (1973)	3
2. <u>Com. v. Smigliano</u> , 427 Mass. 490, (1998)	3

ISSUE PRESENTED

WHETHER THE MOTION JUDGE WAS CORRECT IN SUPPRESSING THE FIREARM SEIZED FROM THE MOTOR VEHICLE AS A RESULT OF THE EXERCISE OF THE "COMMUNITY CARETAKING" FUNCTION OF THE SPRINGFIELD POLICE DEPARTMENT.

STATEMENT OF THE CASE

The Defendant-Appellee accepts the Commonwealth's Statement of the Case.

STATEMENT OF FACTS

The Defendant-Appellee accepts the Statement of the Facts filed by the Commonwealth.

ARGUMENT

The Motion Judge was correct in suppressing the firearm and ammunition seized from the motor vehicle finding that this was not a legitimate exercise of the "caretaking" function of the Springfield Police Department.

The Motion Judge made findings of fact that the Commonwealth accepts as correct without suggestion of clear error. The Court determined that the officers were observing a house that was known for after-hours parties. The only two people they saw leave the house were the Defendants, Gerald Eddington and Jessica Cappas. They were holding bottles as they walked across the very busy Wilbraham Road in Springfield, Massachusetts and get into a car in a parking lot. These officers believed that the two people were holding bottles of beer. This motor vehicle drove from the parking lot with the police following. After observing no violation of any law other than the possession of open containers of alcoholic beverages, these officers stopped the car using their lights and siren on a side street in the area. The time was approximately 4:15 a.m. and the Motion Judge determined that the officers had the right to stop the vehicle for a violation of M. G. L. c.90, section 24I, open container of alcohol for which these officers could only write the occupants a citation and release them. Once the stop of the car occurred, the officers found out that the driver, Gerald Eddington, the Co-

defendant, was driving on a suspended license and was arrested. Jessica Cappas was the passenger and she was not the registered owner of the car, but she was not allowed to leave. At this point, the police made a decision to seize the car because they believed that the car could be the object of theft or vandalism if the car was simply locked and left on the street with the owner being called later that morning.

The seizure of the car was done under the "community caretaking" function. In that instance, the Commonwealth has the burden of proving by objective evidence that the actions of the police were "divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." Cady v. Dombrowski, 413 U.S. 433, (1973).

When evidence is seized under these circumstances, the question to be decided by the Motion Judge is whether this police action was a bona fide community caretaker action. Com. V. Smigliano, 427 Mass. 490 (1998).

Here, the police made a decision which would allow them to search the car when that opportunity was not otherwise available to them through the criminal

law. The Motion Judge was familiar with the area where the car was stopped and took Judicial Notice that it was a residential area with substantial on street parking available.

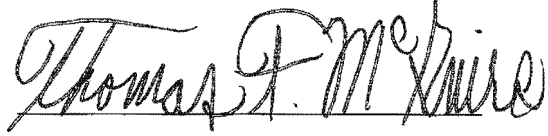
There were no facts known to the police that would have prevented them from leaving the car in a locked condition and calling the owner in the morning, just a few short hours away. If the officer had done that he could only have given Jessica Cappas a citation and let her go on her way. The analysis of the application of the "community caretaking" is a fact driven function which in this case was by the desires of the Springfield Police Officers to search the car.

CONCLUSION

WHEREFORE, the Defendant-Appellee, Jessica Cappas asks This Honorable Appeals Court to affirm the order allowing the Motion to Suppress the firearm and ammunition.

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BY HER ATTORNEY



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MAY 24, 2009

BBO # 335140

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to: Mass. R. A. P. 16(a)(1); Mass. R. A. P. 16(a)(6); Mass. R. A. P. 16(e); Mass. R. A. P. 16(f); Mass. R. A. P. 16(h); Mass. R. A. P. 18; and Mass. R. A. P. 20.


THOMAS F. MCGUIRE

CERTIFICATE OF SERVICE

I, Thomas F. McGuire, certify that I caused the attached two copies of the Defendant-Appellee's Brief and Motion to Extend Time to File Defendant's Brief to be served on the Assistant District Attorney by mailing same, with first class postage pre-paid thereon, to his office at 50 State Street, Springfield, Massachusetts 01103 on May 26, 2009.


THOMAS F. MCGUIRE