

WISCONSIN SUPREME COURT
THURSDAY, NOVEMBER 6, 2008
10:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which affirmed a Columbia County Circuit Court decision, Judge James O. Miller, presiding.

2007AP1834-CR [State v. Kramer](#)

This case, which involves a conviction for intoxicated use of a motor vehicle (OWI), examines the “community caretaker” function of a police officer, who was checking on a vehicle pulled to the side of the road.

Some background: Todd Lee Kramer was arrested for OWI after an officer observed his pick-up truck pulled over to the side of a highway with its hazard lights flashing. The police officer observed the vehicle and pulled behind it to see if there was a need for help. The officer asked if he could help, and then noticed the defendant’s speech was slurred and the odor of intoxicants coming from inside the truck. A subsequent investigation led to the defendant’s arrest for OWI.

Aside from the fact the truck was stopped on a roadside with its warning lights flashing, the truck did not appear to be damaged or disabled. The officer said he observed nothing suggesting that a crime was being committed or that any traffic laws were being broken. The officer said he made a U-turn, activated his red and blue emergency lights, and pulled in behind the truck to see if there was a need for help.

The defendant testified at the suppression hearing that he had pulled over to take a phone call and had activated his hazard lights because there was a hill nearby and he wanted other vehicles to be able to see him. The circuit court denied the suppression motion, apparently concluding that a seizure had occurred but that the seizure was legal because the officer was acting in a community caretaker function by stopping to inquire about the situation. The defendant appealed, and the Court of Appeals affirmed.

The state contends that even if Kramer had been “seized,” the seizure was made during the officer’s valid performance of the community caretaker function. Kramer argued the officer was not engaged in a bona fide community caretaker activity because he was not in distress or signaling for help.

Kramer has asked the Supreme Court to review the following issues:

- Was the stop of Todd Kramer's vehicle a seizure within the meaning of the Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution?
- Was the stop of Todd Kramer's vehicle justified by the community caretaker exception to the Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution?

A decision by the Supreme Court could clarify law in this area and resolve an apparent problem with the reasoning in existing community caretaker cases.