

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
February 25, 2013 Session

STATE OF TENNESSEE v. IZZ-ALDIN AHMED MUSTAFA

**Appeal from the Circuit Court for Sevier County
No. 14779-III Rex Henry Ogle, Judge**

No. E2013-00960-CCA-R3-CD - Filed April 7, 2014

JEFFREY S. BIVINS, J., concurring.

I am constrained to agree with the majority that the trial court's decision in this case must be affirmed. I write separately for two reasons. First, I would point out that the facts of this case dramatically illustrate the results dictated by the Tennessee Supreme Court's continuing restriction, if not effective evisceration, of the community caretaking doctrine in Tennessee. As the majority points out, this restrictive interpretation recently was reaffirmed, and arguably expanded, by the majority opinion of the our supreme court in State v. Moats, 403 S.W.3d 170 (Tenn. 2013).

Second, I disagree with the majority opinion to the extent that it can be interpreted as concluding that even the use of a yellow directional arrow light facing backwards on the police car may be a legitimate factor weighing in favor of a conclusion that a reasonable person would not feel free to leave under these circumstances. Regardless of whether the light would or would not have reflected off nearby storefronts, I would not weigh this factor in that manner in consideration of the totality of the circumstances. Indeed, if considered at all, this factor would weigh in the opposite direction when considered in conjunction with the officer's obvious choice not to activate his blue lights.

In summary, even with my disagreement with the majority on the factor above, I agree with the result reached by the majority after consideration of the totality of the circumstances under the restraints imposed by Moats and its prior line of cases.

JEFFREY S. BIVINS, JUDGE