

IN THE SUPREME COURT OF IOWA

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SUPREME COURT NO. 15-0101

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STATE OF IOWA,  
Plaintiff- Appellee  
vs.

TROY RICHARD BROOKS,  
Defendant- Appellant

---

APPEAL FROM THE DISTRICT COURT  
OF POLK COUNTY  
THE HONORABLE REBECCA GOODGAME-EBINGER

---

APPELLANT'S FINAL BRIEF  
AND  
REQUEST FOR ORAL ARGUMENT

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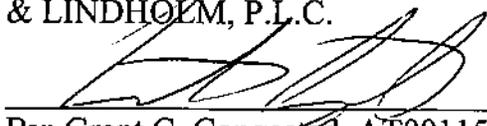
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## **STATEMENT OF THE ISSUE PRESENTED FOR REVIEW**

- I. WHETHER THE OFFICERS' WARRANTLESS ENTRY INTO MR. BROOKS' RESIDENCE VIOLATED ARTICLE I SECTION 8 OF THE IOWA CONSTITUTION AND CONSEQUENTLY, WHETHER THE DISTRICT COURT ERRED IN REFUSING TO APPLY IOWA'S EXCLUSIONARY RULE.**

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## **STATEMENT OF THE CASE**

### **Nature of the Case**

This case is before the Court on its granting of Mr. Brooks' Application for Discretionary Review of the district court's order revoking his probation entered on January 9, 2015. Order of Disposition, 1/9/15; App.P48-P49.

### **Course of Proceedings**

On August 28, 2013, a trial information was filed in FECR264763 charging Troy Brooks with one count of Possession of a Controlled Substance Third Offense, in violation of Iowa Code section 124.401(5). Trial Information (FECR264736); App.P1-P4. The Trial Information provided notice of the Habitual Offender Enhancement provision of Iowa Code section 902.8. A separate Amended Trial Information was filed in FECR264352 on October 9, 2013, charging Mr. Brooks with Conspiracy to Manufacture a Controlled Substance, in violation of Iowa Code section 124.401(1)(c)(6) (Count I); Manufacturing a Controlled Substance, in violation of Iowa Code section 124.401(1)(c)(6) (Count II); and Possession of Lithium with intent to be Used to Manufacture a Controlled Substance, in violation of Iowa Code 124.401(4) (Count III). Trial Information (FECR264352); App.P5-P10. Each count provided notice of the Habitual

Offender Enhancement and the Second or Subsequent Offender Provision of Iowa Code section 124.411.

On October 22, 2013, the Defendant pled guilty to the Trial Information in FECR264763 (Possession of a Controlled Substance, Third Offense) without the Habitual Offender Enhancement and to Count I of the Amended Trial Information in FECR264352 (Conspiracy to Manufacture a Controlled Substance) without any sentencing enhancements. Order to Accept Plea; App.P11-P12. On December 23, 2013, Mr. Brooks was sentenced to a period of incarceration not to exceed five years in FECR264763 and to a period of incarceration not to exceed ten years in FECR264352, with the sentences to be served consecutively. Order of Disposition; App.P18-P20. The sentences were suspended and the Defendant was placed on probation for a period of two years. Order of Disposition; App.P18-P20.

A Report of Violation of Mr. Brooks' probation was filed by the Fifth Judicial District Department of Corrections in each of Mr. Brooks' cases on September 17, 2014, as a result of the warrantless entry and search of his residence on September 15, 2014. Report of Violations; App.P25-P27. Mr. Brooks filed a Motion to Suppress/Motion to Exclude, seeking to prevent the use of evidence seized and statements made to probation officers in this

probation revocation matter on October 10, 2014. Motion to Suppress/Motion to Exclude; App.P28-P38. An evidentiary hearing regarding the alleged violations was held on October 22, 2014, in front of the Honorable Rebecca Goodgame-Ebinger. Following hearing, Judge Goodgame-Ebinger denied the motion to suppress and considered the evidence that was sought to be excluded on December 19, 2014. Ruling on Defendant's Motion to Suppress; App.P39-P47. Judge Goodgame-Ebinger revoked Mr. Brooks' probation and imposed the original sentence on January 9, 2015. Order of Disposition (Probation Revocation); App. P48-P49. Application for Discretionary Review was filed on January 20, 2015. Application for Discretionary Review; App. P50-P79., which was granted by this Court on February 6, 2015. Order, 2/6/15; App.P80-P81.

### **Statement of Facts**

On September 15, 2014, Troy Brooks was residing at his father's home at 1008 Boyd Street in Des Moines, Iowa. Supp. Tr. P. 33-34; App.P115-P116. He was renting a room in his father's house and was paying him rent money to stay there. Supp. Tr. P. 36-37; App.P118-P119. On that same day, Mr. Brooks' probation officer, Mike Evans, received two voicemail messages indicating that Mr. Brooks was using methamphetamine and had locked himself in his room at his father's home. Supp. Tr. P. 7-8;

App.P89-P90. One of the messages was from Mr. Brooks' father and sister, who resided at the house on Boyd with Mr. Brooks. Supp. Tr. P. 7-8;

App.P89-P90. The other was a message from the head of Freedom House, indicating that Mr. Brooks' family had shared the same concerns with her.

Supp. Tr. P. 9; App.P91.

Mr. Evans was in a court hearing in Lucas County at the time that he received these messages, so he spoke to his supervisor and called Officers Lance Wignall and Ryan Smith of the warrant team or "fugitive unit" to address the situation. Supp. Tr. P. 7, 9-10; App.P91-P92. Officers Wignall and Smith arrived at the home. Supp. Tr. P.17; App.P99. At the time, they were fully uniformed in shirts that said "Police" on them; they had Polk County Sheriff patches on the arm; they were carrying guns and handcuffs that were visible; and they were trained as law enforcement officers through the Iowa Law Enforcement Academy. Supp. Tr. P. 27-30; App.P109-P112. They did not obtain a warrant to enter the home nor did they attempt to at any point. Supp. Tr. P. 12, 26; App. P94, P108.

Upon their arrival, Mr. Brooks' father led them upstairs to a bedroom door. Supp. Tr. P. 17; App.P99. The door was closed and was barricaded by a knife that was stuck in the door jamb. Supp. Tr. P. 19, 24; App.P101, P106. The officers stated that they identified themselves as

“probation/parole” but Mr. Brooks stated that they stated they were the “warrant team.” Supp. Tr. P. 17, 35; App.P99. Mr. Brooks believed them to be police officers. Supp. Tr. P. 38, 39; App.P120, P121. The officers knocked on the door for several minutes and a conversation ensued between the officers and Mr. Brooks. Supp. Tr. P. 17-19; App.P99-P101. At some point, the knife popped out of the door and the officers entered the room. Supp. Tr. P. 19; App.P101. Mr. Brooks testified that he never removed the knife from the door and the officers forced the knife out of the jamb, causing the door to be able to be opened. Supp. Tr. P. 35-36; App.P117-P118. The officers immediately handcuffed him and conducted a search of the room. Supp. Tr. P. 18, 20-21, 37; App. P100, P119. After Mr. Brooks was handcuffed and seized, he made statements to the officers that indicated that he had used methamphetamine. Supp. Tr. P. 22; App .P104. Mr. Brooks was taken into custody.

Additional facts will be set forth below, as necessary.

### **Routing Statement**

Retention by the Iowa Supreme Court would be appropriate because this appeal involves substantial constitutional questions, specifically, under what circumstances may warrantless searches of probationers in the State of Iowa be conducted, and whether or not Iowa’s exclusionary rule prohibits

the use of illegally obtained evidence in probation violation proceedings.

Iowa R. App. P. 6.401(2).

## LEGAL ARGUMENT

### **II. THE OFFICERS' WARRANTLESS ENTRY INTO MR. BROOKS' RESIDENCE VIOLATED ARTICLE I SECTION 8 OF THE IOWA CONSTITUTION AND CONSEQUENTLY THE DISTRICT COURT ERRED IN REFUSING TO APPLY IOWA'S EXCLUSIONARY RULE.**

**Preservation of Error:** Appellant preserved error by timely filing a Motion to Suppress Evidence, obtaining a ruling on same, and timely filing his Application for Discretionary Review.

**Standard of Review:** The Court employs a de novo review when resolving issues involving constitutional claims. *State v. Reinier*, 628 N.W.2d 460, 464 (Iowa 2001).

**Argument:** Under the United States Constitution, federal courts have generally held that the exclusionary rule does not apply to violations of the Fourth Amendment in probation revocation proceedings. *See e.g., United States v. Bazzano*, 712 F.2d 826, 830–34 (3d Cir.1983) (en banc) (discussing deterrence rationale of Fourth Amendment exclusionary rule as applied to probation revocation); *United States v. Frederickson*, 581 F.2d 711, 713 (8th Cir.1978) (holding Fourth Amendment exclusionary rule inapplicable to

probation revocation proceedings), *but see United States v. Workman*, 585 F.2d 1205, 1211 (4th Cir.1978) (determining rule applicable to parole revocation hearing). While federal courts have generally declined to apply the exclusionary rule to violations of the Fourth Amendment in probation revocation proceedings, Article 1 Section 8 of the Iowa Constitution provides greater protection to Iowans and the exclusionary rule should apply to violations of the search and seizure clause of the Iowa Constitution in the probation revocation context.

Iowa courts cannot interpret the Iowa Constitution to provide less protection than that provided by the United States Constitution; however, the court is free to interpret our constitution as providing greater protection for our citizens' constitutional rights. *State v. Cline*, 617 N.W.2d 277, 285 (Iowa 2000). While "we strive to be consistent with federal constitutional law in our interpretation of the Iowa Constitution, we jealously guard our right and duty to differ in appropriate cases." *Id.* "[O]ur court would abdicate its constitutional role in state government were it to blindly follow federal precedent on an issue of state constitutional law." *Id.*

This is one such case where Iowa has the rare opportunity to decide an issue under the State constitution, without needing to justify a reason for departing from the otherwise "persuasive" interpretation provided by federal

courts. *State v. Hoskins*, 711 N.W.2d 720, 725 (Iowa 2006) (“Cases interpreting the federal constitution are persuasive in our interpretation of the state constitution because the federal and state search-and-seizure clauses are similar”). More importantly though, when issues of great significance are properly raised and presented to the Iowa Supreme Court, the Court has not hesitated to interpret the Iowa Constitution as providing more protections to the citizenry of this State even when presented with federal authority to the contrary. See *Cline*, 617 N.W.2d 277; *Bierkamp v. Rogers*, 293 N.W.2d 577 (Iowa 1980); *Racing Ass’n of Central Iowa v. Fitzgerald*, 675 N.W.2d 1 (Iowa 2004); *State v. Skola*, 2001 WL 1446979 (Iowa App.); and *State v. Wilkes*, 756 N.W.2d 838 (Iowa 2008). In fact, it has been suggested that it may well constitute ineffective assistance of counsel not to raise and present such arguments in the appropriate cases. See *State v. Effler*, 769 N.W.2d 880 (Iowa 2009) (Appel, J., concurring). This is an appropriate case to apply the Iowa Constitution in a manner providing greater protection to the citizens of Iowa than that which is afforded by the federal constitution.

**A. Article 1 Section 8 of the Iowa Constitution prohibits the use of illegally obtained evidence in probation violation proceedings.**

The United States Supreme Court has rightly or wrongly determined that the sole purpose of the federal exclusionary rule is to deter police

misconduct. See *Hudson v. Michigan*, 547 U.S. 586 (2006). The federal exclusionary rule has been limited to only those situations ““where its remedial objectives are thought most efficaciously served’ *United States v. Calandra*, 414 U.S. 338, 348 (1974) – that is, ‘where its deterrence benefits outweigh its substantial social costs.’” *Id.* at 591. It is this purpose of deterring police misconduct that the Iowa Supreme Court has since rejected in its ruling in *State v. Cline*. 617 N.W.2d at 289. Despite *Cline*, the State will no doubt argue that the Court’s holding in *Kain v. State*, 378 N.W.2d 900 (Iowa 1985), is controlling and that the exclusionary rule does not apply to probation revocation proceedings under Article I section 8 of the Iowa Constitution. The holding in *Kain* should now be overruled.

In *Kain*, the defendant argued that the exclusionary rule under the Fourth Amendment to the U.S. Constitution and article I section 8 of the Iowa Constitution should apply to prohibit the use of evidence illegally obtained evidence at a probation revocation proceeding. 378 N.W.2d at 901. In dismissing the defendant’s argument under the federal constitution, the Court followed the holding of federal Courts of Appeals and held that the exclusionary rule should only apply under the Fourth Amendment if there has been some evidence of police misconduct in influencing a probation

violation because the federal exclusionary rule's sole purpose is deterring police misconduct. *Id.* at 902.

The Court also held that the exclusionary rule does not apply to probation revocation proceedings under article I section 8 of the Iowa Constitution. *See Kain*, 378 N.W.2d at 902-03. The Court stated that the exclusionary rule did not apply for two reasons: 1) "our interpretation of article I section 8 has quite consistently with prevailing federal interpretations of the fourteenth amendment in deciding similar issues;" and 2) the Court had already adopted, "independent of any controlling precedent, a constitutional balancing test which does not require the extension of the exclusionary rule into the present area" in *State v. Swartz*, 278 N.W.2d 22, 23-25 (Iowa 1979). *Kain*, 378 N.W.2d at 902-03.

In *Swartz*, the Court was called upon to determine whether the exclusionary rule applied to a sentencing hearing. 278 N.W.2d at 22-23. The Court in *Swartz* found that the exclusionary rule did not apply. *Id.* at 26. Notably, however, *Swartz* never mentions article I section 8, nor does it specifically state that the holding was based upon the Iowa constitution. It simply surveyed federal precedent that "indicated a trend toward a restrictive application of the exclusionary rule" without specifically and independently analyzing the application of the rule under our state constitution. *Id.* at 23-

25. Nevertheless, relying on *Swartz*, the *Kain* Court stated that it was “reluctant to retract from these views in the present case and therefore reject *Kain*’s claims under the state constitution.” *Kain*, 378 N.W.2d at 903.

The Iowa Court of Appeals was recently presented with the same question posed in this appeal and in *Kain* and declined to apply the exclusionary rule under Article I section 8 of the Iowa Constitution to probation revocations. See *State v. Shoemaker*, 2011 WL 1817844 (Iowa App.). In *Shoemaker*, the defendant raised a constitutional challenge to a search of her home that resulted in the revocation of her probation. *Shoemaker*, at \*1. She argued that article I section 8 of the Iowa Constitution prohibits the use of unconstitutionally obtained evidence in a probation revocation proceedings. *Id.* The Court of Appeals examined the holding of *Kain* in light of the Court’s decision in *State v. Ochoa*, 790 N.W.2d 260, 266 (Iowa 2010), in which the Iowa Supreme Court rejected the lock-step approach to interpretation of the Iowa Constitution that the Court adopted in prior opinions, including *Kain*. *Shoemaker*, at \*3. The *Ochoa* court stated, “[W]e now hold that, while United States Supreme Court cases are entitled to respectful consideration, we will engage in independent analysis of the content of our state search and seizure provisions.” *Ochoa*, 792 N.W.2d at 267; see also *State v. Cline*, 617

N.W.2d 277, 285 (Iowa 2000), *abrogated on other grounds by State v. Turner*, 630 N.W.2d 601, 606 n.2 (Iowa 2001).

The Court of Appeals went on to explain that, “[t]o the extent *Kain’s* refusal to extend the state exclusionary rule to probation revocation proceedings was based on “prevailing federal interpretations of the fourteenth amendment in deciding similar issues,” 378 N.W.2d at 902, we conclude the *Kain* holding has been called into question by *Ochoa*.” *Shoemaker*, at \*3. The Court of Appeals, however, stated that to the extent that *Kain’s* holding under the state constitution was based upon an “independent constitutional balancing test,” it was controlling. *Id.*, at \*4. In upholding the defendant’s probation revocation in *Shoemaker*, the Court of Appeals all but stated that the holding in *Kain* should be revisited, but declined to overturn the conviction of the defendant because the holding in *Kain* had not been explicitly overruled by the Iowa Supreme Court. *Id.* The Iowa Supreme Court declined to take *Shoemaker* on Further Review at that time.

Several reasons exist for the Court to now explicitly overrule the holding in *Kain*. In 2000, the Iowa Supreme Court decided *State v. Cline*, and in doing so, specifically rejected the argument previously found persuasive in *Kain*. *Cline*, 617 N.W.2d at 289. According to the *Cline*

court, the exclusionary rule under the Iowa Constitution serves a much greater purpose than merely deterring police misconduct. Under the Iowa Constitution, the exclusion of illegally obtained evidence also serves to remedy constitutional violations. *Id.* at 289.

The search and seizure provision in the Iowa Constitution protects an individual's privacy with respect to his person and his home from unwarranted invasion by the government. *Id.* at 285, citing *Girard v. Anderson*, 219 Iowa 142, 148, 257 N.W. 400, 402 (1934); *State v. Sheridan*, 121 Iowa 164, 166, 96 N.W. 730, 731 (1903). “This court noted as early as 1902 that ‘[t]his guaranty ... has ... received a broad and liberal interpretation for the purpose of preserving the spirit of constitutional liberty.’” *Cline*, 617 N.W.2d at 285, citing *State v. Height*, 117 Iowa 650, 661, 91 N.W. 935, 938 (1902).

“An example of the Court's attempts to preserve the spirit of Iowa's constitutional guarantee is reflected in the fact that Iowa was one of the first states to embrace the exclusionary rule as an integral part of its state constitution's protection against unreasonable searches and seizures, and, in fact, did so several years before the United States Supreme Court's decision in *Weeks*.” *Cline*, 617 N.W.2d at 285. As far back as 1902, the Iowa Supreme Court stated:

“A party to a suit can gain nothing by virtue of violence under the pretense of process, nor will a fraudulent or unlawful use of process be sanctioned by the courts. *In such cases parties will be restored to the rights and positions they possessed before they were deprived thereof by the fraud, violence, or abuse of legal process.*”

(emphasis added) *State v. Sheridan*, 121 Iowa 164, 96 N.W. 730, 731

(1903); citing *State v. Height*, 117 Iowa 650, 91 N.W. 935, 940 (1902).

Iowa’s exclusionary rule also functions to protect the integrity of the courts.

*Cline*, 617 N.W.2d at 289. “The reasoning that leads to this conclusion is obvious. By admitting evidence obtained illegally, courts would in essence condone the illegality by stating it does not matter how the evidence was secured.” *Id.*

The Court of Appeals in *Shoemaker* suggested that the reasoning and purpose of the exclusionary rule under the Iowa Constitution stated in *Cline* could also be applied to probation revocation cases:

We observe, however, that in *Cline*, our supreme court parted ways with the United States Supreme Court and declined to adopt a good faith exception to the exclusionary rule under the Iowa Constitution. 617 N.W.2d at 293. Much of the court’s reasoning in *Cline* concerned its disagreement with the Supreme Court’s limitations on the purpose and use of the exclusionary rule. *Id.* at 288–92. We think the reasoning of *Cline* could be extended to this case. But it is not our place to do so, as *Cline* did not expressly overrule, abrogate, or otherwise disapprove of its holding in *Kain*.

*Shoemaker*, at \*4, FN1. While it may not have been the Court of Appeals' place to do so, it is certainly the duty of this Court to say what the Iowa Constitution stands for. *See Cline*, 617 N.W.2d at 285 ("Indeed, the Iowa Constitution is declared to 'be the supreme law of the State ...,' Iowa Const. art. 12, § 1, and it is the responsibility of this court, not the United States Supreme Court, to say what the Iowa Constitution means," *see Hutchins v. City of Des Moines*, 176 Iowa 189, 205, 157 N.W. 881, 887 (1916)). The "expanded" purposes behind Iowa's exclusionary rule under article I section 8 stated in *Cline* compel its application to probation violation hearings.

First and foremost, excluding illegally obtained evidence remedies the constitutional violation inflicted upon the individual by placing them back in the position that they would have been prior to the violation. Without application of the exclusionary rule in probation violation proceedings, the victim of a constitutional violation has no remedy for the violation. While it has been argued that a civil cause of action against the offending officers serves the same purpose, such an argument ignores the practical reality that lawsuits by prisoners against uniformed police officers rarely succeed. *See Hudson v. Michigan*, 547 U.S. at 610-611 (Breyer, J., dissenting) (civil remedy is not a viable remedy compared to exclusionary rule). Even in a doubtful situation where a probationer could somehow convince an attorney

to take the case, such a lawsuit, even if successful, would still not place the probationer back into the position she would have been in prior to the violation. If the district court can legally consider the illegally obtained evidence, the subsequent sentence would be legally imposed and there would be no possibility of the probationer being compensated for the time spent in jail or prison, away from friends, family and loved ones.

Second, application of the exclusionary rule to probation violation hearings protects the integrity of the courts by requiring judges to exclude and disregard illegally obtained evidence in determining whether or not probation has been violated. Absent application of the exclusionary rule, the court would, out of one side of its mouth declare the individual a victim of a constitutional violation, while out of the other side of its mouth, it would revoke that same “victim’s” liberty. As this Court stated in *Cline*: “Judges would become accomplices to the unconstitutional conduct of the executive branch if they allowed law enforcement to enjoy the benefits of the illegality.” *Cline*, 617 N.W.2d at 289. The court would be “wink[ing] at the unlawful manner in which the government secured the proofs now desired to be used, and [would] condone the wrong done defendants by the ruthless invasion of their constitutional rights, and [would] become a party to the wrongful act by permitting the use of the fruits of such act.” *Cline*, 617

N.W.2d at 290; citing *United States v. Mounday*, 208 F.186, 189 (D. Kan. 1913).

Third, application of the exclusionary rule would also serve the purpose of deterring police misconduct. Absent application of the exclusionary rule to probation violation proceedings, there simply is no deterrence to law enforcement blatantly and openly violating a probationer's constitutional rights. While the evidence may not be admissible if a new offense is discovered, the probation violation would still be easily proven and the defendant's liberty still jeopardized. This is ripe for abuse by law enforcement with the only possible remedy being the aforementioned impotent civil action for damages being attempted by an unsympathetic criminal plaintiff against a uniformed police officer "sworn to serve and protect."

Last, but in no way least, it is imperative to recognize that no societal harm will come about as a result of the application of the exclusionary rule in probation violation proceedings. This is not a situation, such as in substantive criminal prosecutions, where application of the exclusionary rule sometimes serves to set "the guilty free and the dangerous at large." *Hudson v. Michigan*, 547 U.S. at 591; citing *United States v. Leon*, 468 U.S. 897, 907 (1984). Rather, it would merely return the probationer to the position he

was in before the illegal search occurred, namely back on probation under the strict supervision of a now-alerted probation officer.

Other jurisdictions have had the opportunity to take up the very issue raised in this appeal with differing conclusions. *See generally*, Phillip E. Hassman, *Admissibility, In State Probation Revocation Proceedings, of Evidence Obtained Through Illegal Search and Seizure*, 77 A.L.R.3d 636 (1977 & 1996 Supplement). Federal courts have generally operated under the premise that the exclusionary rule is a judicially created remedy designed to safeguard Fourth Amendment rights through its deterrent effect, and that the rule does not bestow a personal constitutional right upon an aggrieved party. *See, e.g., Bazzano*, 712 F.2d at 830–34 (discussing deterrence rationale of Fourth Amendment exclusionary rule as applied to probation revocation); *Frederickson*, 581 F.2d at 713 (holding Fourth Amendment exclusionary rule inapplicable to probation revocation proceedings). In other words, federal courts, including the U.S. Supreme Court, have held that the exclusionary rule is merely a measure to deter unlawful police action. *See Michigan v. DeFillippo*, 443 U.S. 31 (1979). This was specifically the reasoning that our Supreme Court found unpersuasive in *Cline*. *See Cline*, 617 N.W.2d at 288-292.

Some state high courts have blindly followed the “wisdom” of federal precedent in declining to apply the exclusionary rule to probation revocation proceedings. Many have come to this conclusion simply because the interpretation of their state constitutional provisions have traditionally tracked with the prevailing interpretation of the Fourth Amendment. Of course, our Supreme Court’s holding in *Ochoa* disapproves of this lock-step approach. *Ochoa*, 792 N.W.2d at 266-67.

When states have independently examined their own constitutions, however, many have come to a different result. Of the states that have independently considered their own state constitutional search and seizure provisions, several have determined that their state constitutions provide more protection for their citizens than the federal constitution and have applied the exclusionary rule to probation revocation proceedings. These courts “have applied a different rationale in resolving this issue and found that the exclusionary rule to be applicable in probation revocation hearings based upon constitutional privacy rights.” *State v. Marquat*, 123 N.M. 809, 812 (1997) (listing other states that have taken this approach).

For example, in *Marquat*, the New Mexico Supreme Court stated that certain provisions of their state constitution may provide a higher threshold of protection that parallel federal constitutional provisions and the court has

declined to interpret the New Mexico Constitution in lock-step with federal precedent interpreting provisions of the United States Constitution. *Id.*, at 813 (internal citations omitted). In finding that the exclusionary rule applied to probation revocation hearings, the New Mexico Supreme Court stated:

While the United States Supreme Court held that the purpose of the exclusionary rule is to deter police misconduct, the New Mexico Supreme Court has held that the focus of the exclusionary rule “is to effectuate in the pending case the constitutional right of the accused to be free from unreasonable search and seizure.” *Gutierrez*, 116 N.M. at 446, 863 P.2d at 1067. Accordingly, our Supreme Court in *Gutierrez* emphasizes that our state constitution focuses on the constitutional rights of individuals; thus, the exclusionary rule is not a “mere ‘judicial remedy’ ” for unconstitutionally seized evidence. *Id.* Application of the exclusionary rule to probation revocation proceedings is consistent with this state's constitutional purpose.

*Marquat*, 123 N.M. at 813.

Washington’s Court of Appeals came to a similar conclusion in *State v. Lampman*, 45 Wash. App. 228 (1986). Prior to *Lampman*, Washington courts had held that the exclusionary rule did not apply to parole or probation revocation proceedings except for incidents of police misconduct. 45 Wash. App. at 230-31 (internal citations omitted). The *Lampman* Court went on to state that that holding was based on then-prevailing notions under the Fourth Amendment; since that time, the Washington Supreme Court has, on several occasions, emphasized that the search and seizure clause of

Washington's state constitution provides broader protections than the federal constitution. *Id.* at 231. The court found that while the purpose of the federal exclusionary rule was to deter unlawful police action, the purpose of the state constitutional exclusionary rule was a remedy for an individual's right to privacy and applied the rule to probation revocations. *Id.* at 232.

Other jurisdictions have similarly held that, under their state constitutions, the exclusionary rule prohibited the use of evidence obtained in violation of their search and seizure clauses in probation violation hearings. *See State ex rel. Juvenile Dept. of Multnomah County v. Rogers*, 314 Or. 114, 836 P.2d 127, 128-130 (1992) (holding that while previous Oregon cases did not apply the exclusionary rule to probation violation hearings, when looking at state constitution independent of the federal constitution, the rule did apply); *State v. Dodd*, 419 So.2d 333, 334-35 (Fla. 1982) (state constitution prohibits admissibility of unconstitutionally obtained evidence); *Mason v. State*, 838 S.W.2d 657, 659-60 (Tex. App. 1992) (evidence obtained as a result of an illegal search and seizure is inadmissible over objection in a probation revocation hearing); *Howard v. State*, 168 Ga.App 143, 308 S.E.2d 424, 425 (1983) (illegally seized evidence may not be used to revoke probation).

Similar to the cases cited above, the protection of the right to privacy under the Iowa constitution through the use of the exclusionary rule is precisely the approach that the Iowa Supreme Court found to be persuasive in *Cline*. See *Cline*, 617 N.W.2d at 289 (“[T]he exclusionary rule provides a remedy for the constitutional violation...”). When the societal “costs” are compared to the stated purpose of the exclusionary rule under our state Constitution, there is no other conclusion but that the exclusionary rule under the Iowa Constitution should be applied to probation violation proceedings. It was error for the district court to conclude otherwise.

**B. The officers’ entry into Mr. Brooks’ residence violated Article 1 Section 8 of the Iowa Constitution because no exception to the warrant requirement existed to justify the entry.**

If the Court decides that the exclusionary rule applies to violations of Article I section 8 of the Iowa Constitution in the probation revocation context, it must next be determined whether a violation of Article I section 8 did in fact exist. Because no warrant was obtained and no valid, recognized exception to the warrant requirement was present, the search of Mr. Brooks’ residence was unlawful.

Article I, section 8 of the Iowa Constitution provides:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by

oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.

Ia. Const., Art I, sec. 8. This provision of the Iowa Constitution protects people from arbitrary intrusion. Warrantless invasion of the home was the “chief evil” that the Fourth Amendment and article I section 8 each sought to address. *State v. Kern*, 831 N.W.2d 149, 164 (Iowa 2013), citing *Reiner*, 628 N.W.2d at 464. “We employ a two-step approach to determine whether there has been a violation of ... article I, section 8 of the Iowa Constitution.” *State v. Lowe*, 812 N.W.2d 554, 567 (Iowa 2012). First, the defendant must show he or she has “a legitimate expectation of privacy in the area searched.” *Id.* Second, if so, we must determine whether the defendant's rights were violated. *Id.*

First, Mr. Brooks did possess a legitimate expectation of privacy in the area that was entered. Mr. Brooks had a constitutionally protected interest in his bedroom, even though he did not own the home he was staying in. *See State v. Fleming*, 790 N.W.2d 560, 566 (Iowa 2010) (recognizing a privacy interest in an occupant’s rented room in a house). It is clear that Mr. Brooks had a legitimate expectation of privacy in his bedroom. He testified that he had sole possession of the room at the time the entry took place and paid his father rent for the use of the room. Supp. Tr. PP. 36-37; App. P118-P119. Mr. Brooks testified that he had the right to exclude his father from that room. Supp. Tr. P. 38; App. P120. Even if his father consented to the search of the home

generally, Mr. Brooks' objection to a search of his room specifically would prevail. The United States Supreme Court has recently announced a narrow exception to the rule that a cotenant's consent is binding on other cotenants. See *Georgia v. Randolph*, 547 U.S. 103, 106 (2006). Iowa law has also accepted this consent exception. "[A] physically present co-occupant's stated refusal to permit entry prevails, rendering the warrantless search unreasonable and invalid as to him." *Lowe*, 812 N.W.2d at 576, citing *Randolph*, 547 U.S. at 106. Since Mr. Brooks had a reasonable expectation of privacy in his room, we next consider whether Mr. Brooks' rights under article I section 8 were violated.

It is undisputed that Mr. Brooks was on probation at the time that the search of his bedroom was carried out. Our supreme court, however, has now stated unequivocally that "under article I, section 8 [of the Iowa Constitution], the warrant requirement has full applicability to home searches of both probationers and parolees by law enforcement." *State v. Short*, 851 N.W.2d 474, 506 (Iowa 2014). The court expressly rejected the argument that a probation agreement limits the constitutional warrant requirement even if the agreement explicitly so provides. *Id.* at 504. The protection the Iowa Constitution grants to probationers and parolees is greater than that provided by the Fourth Amendment to the United States Constitution. "The United States

Supreme Court ... has engaged in innovations that significantly reduce the protections of the Warrant Clause of the Fourth Amendment. We decline to join the retreat under the Iowa Constitution.” *Id.* at 506.

Iowa has a strong history in favor of the warrant requirement of article I section 8. For over a century this tenet of Iowa constitutional law has rung true:

The right of the citizen to occupy and enjoy his home, however mean or humble, free from arbitrary invasion and search, has for centuries been protected with the most solicitous care by every court in the English-speaking world, from Magna Charta down to the present, and is embodied in every bill of rights defining the limits of governmental power in our own republic.

The mere fact that a man is an officer, whether of high or low degree, gives him no more right than is possessed by the ordinary private citizen to break in upon the privacy of a home and subject its occupants to the indignity of a search for the evidences of crime, without a legal warrant procured for that purpose. No amount of incriminating evidence, whatever its source, will supply the place of such warrant. At the closed door of the home, be it palace or hovel, even bloodhounds must wait till the law, by authoritative process, bids it open.

(emphasis added).

*McClurg v. Brenton*, 123 Iowa 368, 371–72, 98 N.W. 881, 882 (1904). “[I]n order to avoid being declared ‘unreasonable’ or unlawful, under article I, section 8, a warrant is ordinarily required.” *Short*, 851 N.W.2d at 501, citing *Ochoa*, 792 N.W.2d at 268-69. “[A]n interpretation that focuses on the

reasonableness clause as the touchstone of search and seizure law sets up the intellectual machinery to engulf the warrant clause and make its mandatory provision ephemeral.” *Short*, at 501, citing *Ochoa*, 792 N.W.2d at 269. “As a result, we have little interest in allowing the reasonableness clause to be a generalized trump card to override the warrant clause in the context of home searches and reject the cases suggesting otherwise.” *Short*, 851 N.W.2d at 502.

No warrant was obtained in this case. It has not been suggested that a warrant could not have been obtained. Not one person involved in this case even attempted to obtain a warrant. Since the entry into Mr. Brooks’ room was without a warrant, it is per se unreasonable unless some valid exception to the warrant requirement exists. *State v Carlson*, 548 N.W.2d 138, 140 (Iowa 1996).

Iowa law recognizes exceptions to the warrant requirement for searches based on “consent, plain view, probable cause coupled with exigent circumstances, searches incident to arrest, and those based on the emergency aid exception.” *State v. Lewis*, 675 N.W.2d 516, 522 (Iowa 2004). When law enforcement agents conduct a warrantless search, the State has the burden to prove by a preponderance of the evidence that such an exception applies. *Carlson*, 548 N.W.2d at 140. If the State fails to meet its burden,

evidence obtained in violation of the warrant requirement is inadmissible.

*Id.*

*Consent.* No valid consent to enter Mr. Brooks' room was obtained in this case, either explicitly or implicitly. Consent is considered to be voluntary when it is given without duress or coercion, either express or implied. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973). This test balances the competing interests of legitimate and effective police practices against our society's deep fundamental belief that the criminal law cannot be used unfairly. *See id.* at 224–25. The State has the burden to prove the consent was voluntary, and voluntariness is a “question of fact to be determined from the totality of all the circumstances.” *State v. Lane*, 726 N.W.2d 371, 378 (Iowa 2007) (quoting *Schneckloth*, 412 U.S. at 227). “The State is required to establish the consent was voluntary by a preponderance of the evidence.” *Reinier*, 628 N.W.2d 460, 465 (Iowa 2001).

The question of voluntariness requires the consideration of many factors, although no one factor itself may be determinative. *Lowe*, 812 N.W.2d at 572, citing 4 LaFave, § 8.2, at 50–141 (discussing several factors bearing upon the validity of consent). In determining whether consent is voluntary, courts examine the totality of the circumstances, including relevant factors such as: “(1) the individual's age and mental ability; (2)

whether the individual was intoxicated or under the influence of drugs; (3) whether the individual was informed of [her] Miranda rights; and (4) whether the individual was aware, through prior experience, of the protections that the legal system provides for suspected criminals. It is also important to consider the environment in which an individual's consent is obtained, including (1) the length of the detention; (2) whether the police used threats, physical intimidation, or punishment to extract consent; (3) whether police made promises or misrepresentations; (4) whether the individual was in custody or under arrest when consent was given; (5) whether consent was given in a public or in a secluded location; and (6) whether the individual stood by silently or objected to the search.” *Lowe*, 812 N.W.2d at 572-73, citing *United States v. Golinveaux*, 611 F.3d 956, 959 (8th Cir.2010) (citation omitted).

In the instant case, Mr. Brooks unequivocally refused to give consent to enter his room. While Mr. Brooks’ father may have consented to a search of the house generally, he could not have consented to a search of Mr. Brooks’ room over his objection. *See Lowe*, 812 N.W.2d at 576. Mr. Brooks barricaded the door and did not allow officers access to it, even after several minutes of attempting to gain access to the room. Supp. Tr. 34-35; App.P117-P118. The officers forced open the door, popping a knife

that was wedged into the door onto the ground as they entered. Supp. Tr. 35-36; App.P117-P118. Even if the Court somehow determines that Mr. Brooks did eventually consent to the entry into the room, the consent was not valid. Based upon the above stated factors, Mr. Brooks did not give voluntary consent to enter his bedroom. In fact, Officer Wignall admitted that the officers were trying to open the door without his consent. Supp. Tr. 25; App. P107. Any purported “consent” was not voluntarily obtained, as Mr. Brooks was under duress to allow the officers into his room. Any evidence obtained in the course of the involuntary entry must be excluded. *Carlson*, 548 N.W.2d at 140.

Further, the probation agreement consent-to-search provision does not in and of itself establish consent to search. “While we recognize that the probation agreement provided [Brooks] with notice that the State asserted the right to execute warrantless searches, we do not think notice eviscerates the warrant requirement for home searches.” *Short*, 851 N.W.2d at 504; *see also Kern*, 831 N.W.2d at 165 (consent to search provision does not establish consent to search); *State v Baldon*, 829 N.W.2d 785, 802-03 (Iowa 2013) (same). No valid consent, express or implied, was obtained in this case.

*Probable cause coupled with exigent circumstances.* An exception to the warrant requirement exists for a search “based on probable cause and exigent circumstances.” *State v. Naujoks*, 637 N.W.2d 101, 108 (Iowa 2001). This exception only applies “when coupled with existing probable cause.” *State v. Strong*, 493 N.W.2d 834, 836 (Iowa 1992). “The standard for probable cause is whether a person of reasonable prudence would believe a crime has been committed or that evidence of a crime might be located in the particular area to be searched.” *Naujoks*, 637 N.W.2d at 108. The exigent-circumstances exception includes a situation in which there is a “probability that, unless immediately seized, evidence will be concealed or destroyed.” *Id.*

Even if the Court determines that probable cause may have existed to conduct the search, there was absolutely no showing that a warrant could not be obtained. Similar to the facts in *Short*,

It is tempting, perhaps, to say that in this case, where the record shows that law enforcement had good reason to conduct the search, that the constitutional requirements have been satisfied. But article I, section 8 does not speak solely in terms of probable cause. Irrevocably welded into article I, section 8 are requirements that a warrant be issued by a neutral magistrate that limits the scope of the search both with respect to places to be searched and items to be seized. The warrant and particularity requirements of article I, section 8 are not weak siblings of the probable cause requirement. By requiring approval of a neutral magistrate and a description with particularity, important

constitutional values are promoted. By involving a neutral magistrate, the warrant requirement ensures that probable cause is evaluated not by overzealous law enforcement officers. The traditional view has been that “the procedure of antecedent justification...is central to the Fourth Amendment.” *See Katz*, 389 U.S. at 359, 88 S. Ct. at 515, 19 L.Ed.2d at 586 (footnote omitted)...

Even if we were inclined to fuzzy up the warrant requirement, a home invasion by law enforcement officers is the last place we would begin the process. The canard that a person's home is their castle has always been subject to some limitations, but the basic principle remains a sound one. We are not talking about a routine encounter at airport security where the announced and understood purpose of the examination is safety of passengers unrelated to the goals of general law enforcement, or an investigative stop on the street where a quick pat down is conducted to ensure the safety of police officers, or an exigent circumstance where the acquisition of a warrant was simply not possible. Here, police officers are penetrating a home, the place of final refuge, the focal point of intimate relationships, and what is constitutionally thought of as a place of safety, security, and repose. Of course, no one says such an invasion can never occur, but only that a warrant, supported by probable cause, describing the place to be searched and the things to be obtained with particularity, is required.

*Short*, 851 N.W.2d at 502-03. No showing was made that a warrant was “simply not possible” to acquire. Exigent circumstances were not present to justify the warrantless entry and seizure.

*Community caretaking*. No community caretaking exception to the warrant requirement existed. “The community caretaking function involves the duty of police officers to help citizens an officer reasonably believes may

be in need of assistance.” *Kern*, citing *State v. Mireles*, 133 Idaho 690, 991 P.2d 878, 880 (Ct.App.1999). A core notion of the community caretaking exception is that it is “totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.” *Cady v. Dombrowski*, 413 U.S. 433, 441, 93 S. Ct. 2523, 2528, 37 L.Ed.2d 706, 715 (1973). The determination of whether the community caretaking exception applies requires a three-step analysis:

- (1) was there a seizure within the meaning of the Fourth Amendment?;
- (2) if so, was the police conduct bona fide community caretaker activity?; and
- (3) if so, did the public need and interest outweigh the intrusion upon the privacy of the citizen?

*State v. Crawford*, 659 N.W.2d 537, 543 (Iowa 2003).

The community caretaking exception encompasses three separate doctrines: (1) the emergency aid doctrine, (2) the automobile impoundment/inventory doctrine, and (3) the ‘public servant’ exception. *See id.* at 541; see also Mary E. Naumann, Note, *The Community Caretaker Doctrine: Yet Another Fourth Amendment Exception*, 26 Am. J. Crim. L. 325, 330–41 (1999). In cases such as this one, the first and third exceptions, which are very similar, are at issue. *See id.* To take advantage of the community caretaking exception in this context, the State must prove two things: First, the searching officer must be “actually motivated by a perceived

need to render aid or assistance.” *State v. Emerson*, 375 N.W.2d 256, 259 (Iowa 1985) (citation and internal quotation marks omitted), abrogated on other grounds by *Horton v. California*, 496 U.S. 128, 110 S. Ct. 2301, 110 L.Ed.2d 112 (1990), as recognized by *State v. Lyman*, 776 N.W.2d 865, 872 (Iowa 2010). Second, the officer's motivation must be such that a “reasonable person under the circumstances would have thought an emergency had existed.” *Id.* (citation and internal quotation marks omitted).

In the instant case, no emergency situation existed to justify the intrusion into Mr. Brooks’ room. No information was relayed to any probation officer or law enforcement officer that Mr. Brooks was in need of immediate assistance, that he had overdosed, that he requested assistance, was having trouble breathing, or the like. Supp. Tr. 12, 27, 30; App.P94, P106, P112. The only information that was apparently relayed to the probation officer was that Mr. Brooks’ father and sister were concerned that he was locked in his room and was allegedly using drugs again. Supp. Tr. 7-8; App.P89-P90. Further, it was not as though Mr. Brooks had been in the room for a number of days using drugs. Only four days prior to the warrantless entry, his probation officer had an appointment with Mr. Brooks, during which he had a clean urinalysis for drugs. Supp. Tr. 10; App.P92. When the officers arrived, Mr. Brooks was speaking to them through the door. Supp. Tr. 18,

27. App. P100, P109. The officers had no legitimate concerns for his safety at that point. It is clear from the officers' conduct in immediately placing Mr. Brooks under arrest and searching the room that their primary purpose was not "actually motivated by a perceived need to render aid or assistance." No emergency situation existed to justify the warrantless intrusion into Mr. Brooks' bedroom.

This case is on all fours with the Court of Appeals' decision in *State v. Sacco*, 2014 WL 4930476 (Iowa App.) (unpublished). In *Sacco*, the defendant's probation officer received information from a probation officer in another district suggesting Sacco may have been harboring a parolee who had absconded. 2014 WL 4930476, \*1. She received further information from that same officer suggesting Sacco may have been involved in drug trafficking. *Id.* Pursuant to that information, Sacco's probation officer sent a warrant team to Sacco's residence. *Id.* The team consisted of two Polk County Sheriff's deputies and a supervisor from the probation office. *Id.* No search warrant was requested for the team's search of Sacco's house. *Id.* Members of the team later explained they believed no warrant was necessary due to Sacco's status as a probationer and the terms of his probation agreement. *Id.* Sacco did not refuse the team's entrance when they arrived,

but he refused to sign a consent form for the search of his residence. *Id.* The team discovered drugs in the house. *Id.*

The Court of Appeals excluded the evidence found stating that “[t]he Iowa Constitution required a warrant—and probable cause—for the search of Sacco’s home.” *Id.* at 2. The Court of Appeals also rejected the State’s argument that this was not a search, but a mere home visit. The court stated that “[t]he facts of this case indicate that a search and not a mere home visit occurred; the warrant team searched Sacco’s home only pursuant to a tip that a fugitive or some drug-related evidence may be found there. The search was not merely “supervision by probation officers pursuant to their ordinary functions.” *Id.* at \*3, FN4, citing *Short*, 851 N.W.2d at 506. Therefore the warrant requirement has full effect on these facts. *Id.*

In the instant case, Mr. Brooks’ home was searched not by probation officers, but by the warrant team, the same team who conducted a search of Mr. Sacco’s home. Supp. Tr. 28; App.P110. Officer Wignall made it clear in his testimony that he does not have a list of probationers that he supervises. Supp. Tr. 29-30; App.P111-P112. In fact, Officer Wignall’s only duties are with the warrant team. Supp. Tr. 30; App.P112. Even though the district court and the State want to characterize the officers who arrived to conduct the search as “probation/parole officers,” they are law enforcement

officers for all intents and purposes. We are not talking about a search conducted by a normal probation officer “in the ordinary course of their duties.” These were fully uniformed officers, wearing shirts that said “police” on them; the uniforms were emblazoned with the “Polk County Sheriff” patch on the shoulder; the officers had guns and handcuffs that were visible; and, last but not least, the officers that arrived were trained as law enforcement and had gone through the same Iowa Law Enforcement Academy training as any other certified peace officer in the state. Supp. Tr. 28-30; App.P110-P112.

The instant case is on all fours with *Sacco* with one major exception. The only difference between the present case and *Sacco* is that, in *Sacco*, the evidence obtained triggered a new charged offense, for which the illegally obtained evidence was rendered inadmissible; in Mr. Brooks’ case it was used to revoke his probation. If the Court finds that the exclusionary rule applies to probation revocation proceedings, then the result in this case should be the exact same as the result in *Sacco*- exclusion of the illegally obtained evidence. Not applying the rule would allow someone who has been the victim of the same unlawful search go free in one instance and have their probation revoked and sent to prison in another. Such an absurd result is not logically or constitutionally sound.

The bottom line is that no warrant was obtained in this case. No evidence was presented that a warrant could not be obtained. Further, there was no evidence that any recognized exception to the warrant requirement existed. As a result, the evidence was obtained in violation of Mr. Brooks' rights under article I section 8 of the Iowa Constitution. The Court should also find that, based upon the higher protection afforded Iowans under article I section 8, the exclusionary rule applies to probation revocation proceedings and declare the evidence obtained in violation of Mr. Brooks' constitutional rights inadmissible.

### **Conclusion**

For the reasons set forth above, Appellant respectfully requests that this Court reverse the district court's ruling that the search of his residence did not violate Article 1 Section 8 of the Iowa Constitution, and that the subsequently obtained evidence could be considered to revoke his probation.

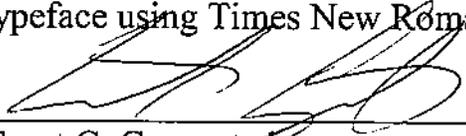
### **Request for Oral Argument**

Request is hereby made that upon submission of this case, counsel for Appellant requests to be heard in oral argument.

**Certificate of Compliance with Type-Volume Limitations, Typeface Requirements, and Type-Style Requirements.**

1. This brief complies with the type-volume limitations of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 8,369 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1)

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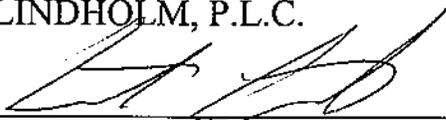
  
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**Attorney's Cost Certificate**

I, Grant C. Gangestad, attorney for the Appellant, hereby certifies that the actual cost of reproducing the necessary copies of this Brief was \$3.80, and that amount has been paid in full by me.

Respectfully Submitted,  
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