

IN THE SUPREME COURT OF IOWA
Supreme Court No. 15-0101

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TROY RICHARD BROOKS,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE REBECCA GOODGAME EBINGER, JUDGE

APPELLEE'S BRIEF

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FINAL

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether the Exclusionary Rule Applies in Probation Revocation Proceedings.

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Planned Parenthood v. Casey, 505 U.S. 833 (1992)
United States v. Winsett, 518 F.2d 51 (9th Cir. 1975)
Calvert v. State, 310 N.W.2d 185 (Iowa 1981)
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Aaron L. Weisman, *Admissibility, in State Probation
revocation Proceedings, of Evidence Obtained Through
Illegal Search and Seizure*, 92 A.L.R. 6th 1, at §2 (2014)

II. Whether the Entry into the Defendant's Room in Order to Take Him into Custody Did Not Violate the Iowa Constitution.

Brady v. United States, 397 U.S. 742 (1970)
Cady v. Dombrowski, 413 U.S. 433 (1973)
New Jersey v. T.L.O., 469 U.S. 325 (1985)
New York v. Harris, 495 U.S. 14 (1990)
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Iowa Code § 908.1
Iowa Code § 908.11 (2015)

ROUTING STATEMENT

The State disagrees with the defendant and believes this case can and should be resolved through the application of existing legal principles to the facts herein. As such, transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case

Defendant Brooks appeals following the revocation of his probation and the imposition of his prior fifteen year sentence for various drug related crimes. Revocation and Sentencing Order; App.48-49 Application for Discretionary Review; App.50-69; Supreme Court Order, 2/6/15; App.80-82.

Course of Proceedings

Defendant Brooks pled guilty to conspiracy to manufacture a controlled substance in case number FECR264352 and possession of a controlled substance, third offense, in case number FECR264736.

Sentencing Order; App.18-20. The defendant was sentenced to a period of incarceration not to exceed ten years on the conspiracy conviction and five years on the possession conviction. *Id.* These terms were ordered to run consecutive to one another “due to the separate and serious nature of the offenses.” *Id.* However, the sentences were then suspended and Defendant Brooks was placed on probation for a period of two years. *Id.*

Nine months after sentencing, a report of probation violation was filed by the defendant’s probation officer. Report of Violation; App.25-27; Tr. 10/22/14 P.6 L.23 – P.7 L.1; App.88-89. The probation officer explained in the report that the defendant’s family had informed authorities that the defendant was using methamphetamine. Report of Violation; App.25-27. During an “emergency home check[,] ... the defendant was found to be in a very physically unsanitary and mentally unstable condition, which placed the defendant’s family in fear for their safety at the residence.” *Id.* The defendant admitted to officers that he had used methamphetamine. *Id.* The report also discussed the defendant’s failure to make any meaningful payments toward his financial obligations. *Id.*

Defendant Brooks filed a motion to exclude any evidence obtained during this emergency home check, claiming his Iowa constitutional right to be free from unreasonable search and seizure had been violated. Motion to Suppress; App.28-38. The court denied this motion, finding the exclusionary rule inapplicable to probation revocation hearings and finding the officers' actions justified by the special needs exception to the warrant requirement. Ruling on Motion; App.39-47. The court then found, by a preponderance of the evidence, that the defendant violated the terms of his probation. Revocation and Sentencing Order; App.48-49. Defendant Brooks' probation was revoked and his original sentence was imposed. *Id.* He then filed an application for discretionary review, which was granted by the Iowa Supreme Court. Application for Discretionary Review; App.50-69; Supreme Court Order, 2/6/15; App.80-82.

Facts

The facts underlying the defendant's criminal offenses of conspiracy to manufacture a controlled substance and possession of a controlled substance are not important to the issues raised in this appeal. It is sufficient to know that the charges involved methamphetamine and that the defendant had a significant prior

criminal history involving both methamphetamine use and assaultive behavior. PSI P.2-4, 9-10; App.13-17.

As to the facts underlying the probation revocation, on September 15 the defendant's probation officer, Michael Evans, received a call from the defendant's sister and father. Tr. 10/22/14 P.6 L.23 – P.8 L.25; App.88-90. The defendant's family asked for the assistance of law enforcement. *Id.* They resided in the same house with the defendant and reported that the defendant was using methamphetamine again and had locked himself in his room since the day before. *Id.*; Tr. 10/22/14 P.21 Ls.3-25; App.103. Officer Evans asked Officer Lance Wignall and other member of the warrant team¹ to respond to the house. Tr. 10/22/14 P.9 L.18 – P.10 L.17; P.15 Ls.7-8; App.91-92, 97. Evans did so because he believed this to be an emergency situation, requiring an immediate response, and he was at the time unable to respond, being indisposed at a court hearing for a different case. *Id.* (By the time Officer Evans was done with his hearing, the home visit had been completed and the defendant was in custody. *Id.*)

¹ This unit is called both the "fugitive unit" and the "warrant team" during the testimony below.

Officer Wignall, like Officer Evans, is a probation officer with the Fifth Judicial District Department of Correctional Services. Tr. 10/22/14 P.16 Ls.7-17; App.98. Unlike Evans, however, he is not assigned specific probationers to supervise. Tr. 10/22/14 P.29 L.17 – P.30 L.9; App.111-12. Instead, he and other members of his team are responsible for assisting with high risk situations and for arresting probationers and parolees for violations of their conditions of release. Tr. 10/22/14 P.31 L.5 – P.32 L.1; App.113-14.

Officer Wignall was told by Officer Evans that there were issues at the defendant's house. Tr. 10/22/14 P.16 L.17 – P.17 L.5; App.98-99. He was told that "there were some concern for the homeowner's safety, and ... they wanted him removed from the house because he was alleged to have been using methamphetamine and acting inappropriately or in some type of bizarre manner." *Id.* Wignall and his team responded to the house where they were met by the defendant's father. Tr. 10/22/14 P.17 Ls.6-14; App.99. The defendant's father opened the door and let the officers enter his home. *Id.*; Tr. 10/22/14 P.18 L.20 – P.19 L.5; App.100-01. He also told the officers the defendant was upstairs and that the defendant was "out of his mind." Tr. 10/22/14 P.17 Ls.6-14; App.99.

Officer Wignall proceeded upstairs and knocked on the door of the defendant's bedroom. Tr. 10/22/14 P.17 L.15 – P.18 L.19; App.99-100. The defendant responded by asking who was there and Officer Wignall informed him that they were officers from probation and parole. *Id.* The defendant did not open the door. *Id.* Wignall then jiggled the handle and discovered it would not open. *Id.* The defendant's father informed Wignall that the door did not have a lock and so it must have been barricaded shut in some manner. *Id.* While officers continued to knock, the defendant asked who was there a second time. *Id.*

At some point the door came open. *Id.* It turned out that the defendant had been using a large knife to hold the door shut and it apparently came loose from the repeated force of the knocking. Tr. 10/22/14 P.19 Ls.6-18; P.34 L.23 – P.35 L.3; App.101, 116-17. The defendant was standing on the other side of the door and looked surprised. Tr. 10/22/14 P.17 L.15 – P.18 L.19; App.99-100. The room stank and Officer Wignall, unsure of what was going on inside the room, immediately handcuffed the defendant. *Id.* While doing so, he discovered that the defendant's hands were covered in fecal matter. *Id.* Wignall also conducted a quick, cursory search of the room. Tr.

10/22/14 P.20 L.22 – P.21 L.2; App.102-03. Nothing of evidentiary value was discovered.

Defendant Brooks was disoriented and confused. Tr. 10/22/14 P.19 L.25 – P.20 L.15; App.101-02. He was behaving in a highly paranoid manner and appeared to Officer Wignall to be under the influence of methamphetamine. *Id.* The defendant then confirmed this fact, telling Wignall that he had relapsed and was on meth. Tr. 10/22/14 P.22 Ls.1-15; App.104. He also told Wignall that he tended to be “out of his mind” when using meth. *Id.* Defendant Brooks was removed from the house, consistent with the wishes of his father and sister, because of his drug use and the related safety concerns. Tr. 10/22/14 P.21 Ls.3-25; App.103.

ARGUMENT

I. **Evidence Obtained After a Violation of Article I Section 8 of the Iowa Constitution May Not Be Used To Initiate New Charges But It May Be Used To Revoke Probation.**

Preservation of Error

The State does not contest error preservation. This issue was raised and decided below. Ruling on Motion P.8 n.1; App.46.

Standard of Review

Appellate courts review constitutional issues de novo. *State v. Lowe*, 812 N.W.2d 554, 566 (Iowa 2012).

Merits

In *Kain v. State*, the Iowa Supreme Court squarely considered the question posed here by Defendant Brooks, “whether the ... state constitution[’s] search and seizure provision[] require[s] exclusion of evidence in probation revocation proceedings[,]” and the Court “unequivocally answered no[.]” *State v. Shoemaker*, No.10-1294, 2011 WL 1817844, at *3 (Iowa Ct. App. May 11, 2011); see *Kain v. State*, 378 N.W. 2d 900 (Iowa 1985). Defendant Brooks now requests this precedent be overturned.² Such drastic action should not be taken lightly. “[T]he very concept of the rule of law underlying our own Constitution requires ... continuity over time” and “a respect for precedent is, by definition, indispensable.” *Planned Parenthood v. Casey*, 505 U.S. 833, 854-55 (1992) (internal citations omitted).

The Iowa Courts, from their inception, “have guarded the venerable doctrine of stare decisis and required the highest possible

² If this case is before the Iowa Court of Appeals, *Kain* is controlling precedent and cannot be overruled. *State v. Shoemaker*, No.10-1294, 2011 WL 1817844, at *3 (Iowa Ct. App. May 11, 2011). If this case is before the Iowa Supreme Court, this issue still need not be considered. As is outlined in section II below, Defendant Brooks’ constitutional rights were not violated. As such, no exclusion would be necessary even if the exclusionary rule were to apply in probation revocation proceedings. Under the doctrine of constitutional avoidance, this Court should decline to go further than is necessary to resolve this particular case.

showing that a precedent should be overruled before taking such a step.” *McElroy v. State*, 703 N.W.2d 385, 394-95 (Iowa 2005) (quoting *Kiesau v. Bantz*, 686 N.W.2d 164, 180 n.1 (Iowa 2004) (Cady, J., dissenting)). Specifically, courts require the proponent to establish the precedent to be clearly erroneous before it will be overturned. *McElroy*, 703 N.W.2d at 394-95; *State v. Derby*, 800 N.W.2d 52, 59 (Iowa 2011). Defendant Brooks has not shown the *Kain* decision to be clearly erroneous and, thus, this prior precedent should not be abandoned.

The reasons underlying the *Kain* decision to allow all reliable evidence to be used in probation revocation proceedings are sound.

An important aspect of our probation system is the placing of certain restrictions on the probationer[.] ... These conditions serve a dual purpose in that they enhance the chance for rehabilitation while simultaneously affording society a measure of protection. Because violation of probation conditions may indicate that the probationer is not ready or is incapable of rehabilitation by integration into society, it is extremely important that all reliable evidence shedding light on the probationer's conduct be available during probation revocation proceedings.

Consequently, to apply the exclusionary rule to probation revocation hearings would tend to frustrate the remedial purposes of the probation system. Not only would extension of

the rule impede the court's attempt to assess a probationer's progress or regression, but also it would force probation officers to spend more of their time personally gathering admissible proof concerning those probationers who cannot or will not accept rehabilitation.

Kain v. State, 378 N.W.2d 900, 902 (Iowa 1985) (quoting *United States v. Winsett*, 518 F.2d 51, 54-55 (9th Cir. 1975)).

The rule in *Kain* is also not an outlier in Iowa law as there are many procedural or constitutional protections which apply in criminal trials but which do not apply to probation revocation proceedings. *See generally Morrissey v. Brewer*, 408 U.S. 471, 480 (1972) (“the revocation of parole is not part of a criminal prosecution and thus the full panoply of rights due a defendant in such a proceeding does not apply to parole revocations”). For example, revocation occurs upon a lower standard of proof and, as such, the probationer no longer enjoys a presumption of innocence until proven guilty beyond a reasonable doubt. *See State v. Hughes*, 200 N.W.2d 559, 563 (Iowa 1972). The probationer also does not enjoy a right to a jury trial and his silence may be used against him. *Calvert v. State*, 310 N.W.2d 185, 187-88 (Iowa 1981) (no Fifth Amendment right to remain silent).

While the Iowa Supreme Court has recently expanded search and seizure protections under the Iowa Constitution beyond those enjoyed by probationers and parolees under the United States Constitution, in reaching this decision the Court appeared to continue to assume that exclusion would not apply in revocation proceedings.

For example, in *Kern* the Supreme Court explained:

‘[T]he fact that a criminal accused is also a parolee should not, *as to a new and separate crime*, destroy or diminish constitutional safeguards afforded all people. If convicted, the sentence will be in addition to that previously imposed.’ As we strive to remain faithful to more than forty years of Iowa precedent, we acknowledge that we rejected the notion that parole supervision could justify a later, full-scale *search for evidence of a new crime*.

State v. Kern, 831 N.W.2d 149, 167 (Iowa 2013) (emphasis added) (quoting *State v. Cullison*, 173 N.W.2d 533, 536 (Iowa 1970)). See also *State v. Cline*, 617 N.W.2d 277, 287 (Iowa 2000) (discussing *Kain* without suggesting its holding is no longer good law).

There are significant policy reasons justifying a differentiation between criminal proceedings and probation revocation proceedings. As discussed in *Kain*, the purpose of the probation system is to facilitate rehabilitation within the community. 378 N.W.2d at 902.

Probation and parole officers are “part of the administrative system designed to assist” probationers and parolees. *Morrissey v. Brewer*, 408 U.S. 471, 478 (1972). These officers monitor the behavior and progress of their clients, offering guidance while ensuring they do not continue to engage in dangerous and/or destructive behavior. A probation officer’s decision to file a report of a violation, or a court’s decision to revoke a probationer’s conditional release, is fundamentally different from the prosecution of new charges. In the probationary context, the interests of the parties align. Everyone is working toward the same goal: to ensure the probationer becomes a law abiding, productive member of society. Such a goal is best served by a system that swiftly and effectively detects destructive behavior. Particularly in the case of individuals like Mr. Brooks, who are trying to overcome an ongoing drug addiction, a system that does not respond to relapses is not a system which serves anyone’s interests.

The prior, well established precedent of this Court is not clearly erroneous. It is supported by rational reasoning and is consistent with the law in a large number of our sister states. Aaron L. Weisman, *Admissibility, in State Probation revocation Proceedings, of Evidence Obtained Through Illegal Search and Seizure*, 92 A.L.R. 6th

1, at §2 (2014) (“A large number of state courts that have considered whether to apply the exclusionary rule in a state court probation revocation proceeding have determined ... that the exclusionary rule should not be applicable[.]”). Under such circumstances, stare decisis must control and prior precedent be respected and maintained. *See generally McElroy v. State*, 703 N.W.2d 385, 394-95 (Iowa 2005).

II. The Entry into the Defendant’s Room in Order to Take Him into Custody Did Not Violate the Iowa Constitution.

Preservation of Error

The defendant filed a motion to suppress, which claimed the entry into his bedroom violated his Iowa Constitutional article I, section 8 rights because no exception to the warrant requirement existed. Motion to Suppress, Para.24; App.33. Among other things, the defendant claimed he did not consent to the entry and that no emergency situation justified the entry. *Id.* at Para.25-29, 35; App.33-36. The district court denied this motion, finding the exclusionary rule inapplicable to probation revocation hearings and finding the special needs exception to the warrant requirement to apply. Ruling on Motion; App.39-47. *See also* Tr. 10/22/14 P.43 L.17 – P.53 L.18; App.125-35.

For reasons of judicial economy and finality, Iowa has long recognized that “rulings admitting or not admitting evidence” are an exception to strict error preservation and may be upheld on any proper legal basis. *DeVoss v. State*, 648 N.W.2d at 56, 62-63; *accord State v. Rave*, No. 09-0415, 2009 WL 3381520, at *2-3 (Iowa Ct. App. 2009). *But see State v. Baldon*, 829 N.W.2d 785, 789 (Iowa 2013) (appearing to find an argument waived for not being raised at a suppression hearing without citation or analysis of the error preservation rule of *DeVoss*). As such, the State agrees that error on this issue was preserved.

Standard of Review

Appellate courts review constitutional issues de novo. *State v. Lowe*, 812 N.W.2d 554, 566 (Iowa 2012).

Merits

Defendant Brooks claims the evidence obtained as a result of officers’ entry into his room should have been suppressed. Motion to Suppress; App.28-38.³ Before discussing why this claim fails, the

³ Below the defendant requested suppression of his statements on grounds that his *Miranda* rights were violated. Motion to Suppress, P.10; App.37. However, he did not receive a ruling on this claim and does not raise it before this Court. *See* Ruling on Motion; App.39-47.

State would briefly discuss the scope of the evidence at issue. Only a very limited amount of the evidence used to revoke Defendant Brooks' probation can be said to have been obtained as a result of the allegedly improper entry. Specifically, following officers' entry into the defendant's bedroom, they made visual observations of the defendant and his behavior, they conducted a cursory search of the room, and the defendant made admissions to violations of his probation. Tr. 10/22/14 P.17 L.15 – P.18 L.19; P.19 L.25 – P.20 L.15; P.20 L.22 – P.21 L.2; P.22 Ls.1-15; App.99-104. No evidence was discovered during the search and an illegal entry does not render the State's custody of the defendant illegal. *See New York v. Harris*, 495 U.S. 14 (1990). As such, only the officers' visual observations of the defendant's behavior while in the room and possibly the defendant's admissions⁴ would be subject to suppression if the entry were found to be unconstitutional. *Id.*

As such, any *Miranda* claims are waived and the State does not respond to them within this brief.

⁴ The record is ambiguous as to whether the admissions made by the defendant were made while still in his room or once he had been removed from the room. This distinction is important and would need to be clarified in order to determine whether suppression was warranted. *New York v. Harris*, 495 U.S. 14, 20 (1990) (holding that "a warrantless entry will lead to the suppression of any evidence

A. Defendant Brooks consented to the entry when he received a suspended sentence and probation in lieu of incarceration.

A warrantless entry and search is constitutional when it occurs pursuant to voluntary consent. *State v. Baldon*, 829 N.W.2d 785, 791 (Iowa 2013). “The consent establishes a waiver of rights under the Search and Seizure Clause[s]” of the Iowa and the United States Constitutions. *Id.* Furthermore, “a person can contract away the constitutional right to be free from unconstitutional searches” and, by doing so, may consent to in advance of a search. *Baldon*, 829 N.W.2d at 791. When such a contractual waiver has been executed, the question becomes whether the contractual consent was voluntary. *Id.* at 792.

Generally, contract terms are considered to be consensual or voluntary for the same basic reason that courts normally enforce contracts. Conceptually, courts enforce contracts because they are a product of the free will of the parties who, within limits, are permitted to define their own obligations. The consent found within a contract is made evident by the bargain exchanged by the parties.

State v. Baldon, 829 N.W.2d 785, 792 (Iowa 2013)

found, or statements taken, inside the home” but not those statements made once outside the house).

The Iowa Supreme Court has held that a parolee does not give valid consent when he or she signs a parole agreement containing a consent to search provision. *Baldon*, 829 N.W.2d at 802. The Court found the parolee’s consent to be coerced and involuntary given the parolee’s total lack of bargaining power at the time parole is being granted. *Id.* at 795-802. This holding, however, has no applicability to the question of whether Defendant Brooks, a probationer, consented to searches of his home pursuant to his probation agreement because the bargaining power of probationers and parolees are fundamentally different. *Id.* at 795. Specifically, “probationers often end up on probation through plea bargaining and, consequently, maintain a vastly superior bargaining power than parolees.” *Id.*

“A defendant's plea of guilty is a serious act that he or she must do voluntarily, knowingly, and intelligently with an awareness of the relevant circumstances and consequences.” *State v. Utter*, 803 N.W.2d 647, 651 (Iowa 2011) (citing *Brady v. United States*, 397 U.S. 742, 748 (1970)). This is so because “[c]entral to the plea and the foundation for entering judgment against the defendant is the defendant’s admission in open court that he committed the acts

charged in the indictment.” *Brady*, 397 U.S. at 748. In making these admissions, the defendant “stands as a witness against himself[,]” waiving his constitutional rights to remain silent and to a trial. *Id.* As such, the guilty plea must be a “voluntary expression of [the defendant’s] own choice.” *Id.*

A defendant’s decision to plead guilty, and to waive multiple constitutional rights, is not involuntary simply because it is induced by a promise of a less severe sentence. *Brady*, 397 U.S. at 748-55. Even a defendant who waives his constitutional rights in order to avoid the possibility of the imposition of the death penalty is not said to be coerced into an involuntary decision. *Id.* at 755. Likewise, a defendant does not act involuntarily when he waives or otherwise agrees to limit his constitutional search and seizure rights in exchange for a more lenient sentence.

In this case, Defendant Brooks’ fifteen year prison sentence was suspended and he was given only two years of probation. Sentencing Order; App.18-20. In exchange, the defendant agreed to terms and conditions of probation which would “provide reasonable protection of the public and maximum opportunity for rehabilitation of the defendant.” *Id.* The defendant agreed to reside for a period of time at

a residential treatment facility and to complete substance abuse and mental health treatment and aftercare. *Id.* He also agreed: (1) to maintain contact with his probation officer, (2) to refrain from lying to, misleading, or misinforming his probation officer, (3) to treat others with respect and not assault, threaten, or intimidate others, (4) to make himself and/or his residence “available for visits” upon the request of his probation officer, (5) to “submit to a search of [his] person, property, residence, vehicle, or personal effects, at any time, with or without a search warrant or arrest warrant, if reasonable suspicion exists, by a peace officer or probation/parole officer[,]” and (6) to submit to drug testing upon request. Probation Agreement; App.21-24.

Defendant Brooks decided to plead guilty and submit to drug treatment and supervised probation rather than proceeding to trial and risking the possibility of being subjected to incarceration. In doing so, the defendant waived trial rights like a right to a jury, a right to cross examine witnesses, and a right to remain silent. He also waived subsequent privacy rights during his period of probation by agreeing to submit to things such as drug testing, home visits, and warrantless searches based on reasonable suspicion. The defendant’s

choices, between pleading guilty and not guilty, may have both presented undesirable outcomes but his decision between them was nevertheless knowing and voluntary. As such, the later warrantless entry into his room by probation officers upon reasonable suspicion that he had relapsed and was high on methamphetamine was valid pursuant to his prior consent.

“Many courts across the nation have concluded that consent-search provisions in probation agreements constitute a waiver of search-and-seizure rights.” *Baldon*, 829 N.W.2d 792-94 (surveying cases from across the country). As the Seventh Circuit has explained:

Plea bargains are a form of contract, and like other contracts are presumed to make both parties better off and do no harm to third parties, and so they are enforceable and enforced. Nothing in the Fourth Amendment's language, background, or purpose would have justified forcing [a defendant] to serve a prison sentence rather than to experience the lesser restraint of probation. Nothing is more common than an individual's consenting to a search that would otherwise violate the Fourth Amendment, thinking that he will be better off than he would be standing on his rights. Often a big part of the value of a right is what one can get in exchange for giving it up.

United States v. Barnett, 415 F.3d 690, 692 (7th Cir. 2005) (internal citations omitted). Defendant Brooks consented to the entry into his

room when he plead guilty and signed the probation agreement. As such no violation of the Iowa Constitution occurred.

B. The entry into Defendant Brooks’ room was justified by the special needs doctrine.

The special needs doctrine provides a recognized exception to the general warrant requirement. “The doctrine derives its name from” the words of Justice Blackmun, “who stated: ‘only in those exceptional circumstances in which special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable, is a court entitled to substitute its balancing of interests for that of the Framers.’” *State v. King*, 867 N.W.2d 106, 112 (Iowa 2015) (quoting *New Jersey v. T.L.O.*, 469 U.S. 325, 351 (1985)). To determine if the doctrine applies to any given situation, the court must apply a three-factor test. *King*, 867 N.W.2d at 115-16. It must consider: “(1) the nature of the privacy interest at stake, (2) the character of the intrusion, and (3) the nature and immediacy of the government concern at stake and the ability of the search [or seizure] to meet the concern.” *Id.*

The Iowa Supreme Court recently applied this balancing test and determined that “parole officers have a special need to search the home of parolees as authorized by a parole agreement and not

refused by the parolee when done to promote the goals of parole, divorced from the goals of law enforcement, supported by reasonable suspicion based on knowledge arising out of the supervision of parole, and limited to only those areas necessary for the parole officer to address the specific conditions of parole reasonably suspected to have been violated.” *King*, 867 N.W.2d at 126-27. While the facts of this case are different on several fronts than those at issue in *King*, the same conclusion should be reached when the balancing test is applied to Defendant Brooks’ situation. Specifically, this Court should hold that the special needs doctrine justifies the Department of Correction’s warrantless entry into a probationer’s home in order to effectuate an arrest based upon probable cause that the defendant is in violation of his probation.⁵

The first consideration in the balancing test is the nature of the privacy interest at stake. While in many circumstances Probationer Brooks’ privacy interests are coextensive with those enjoyed by other

⁵ The only issue here is whether the entry can be made to effectuate the arrest and not whether the arrest itself can be made without a warrant. Probation officers are statutorily authorized to arrest probationers upon probable cause of a probation violation without a warrant. Iowa Code §§ 908.1 & 908.11 (2015). Further, even felony arrests generally may be effectuated without a warrant, so long as no entry into a defendant’s home is required. *See Payton v. New York*, 445 U.S.573 (1980).

members of the general public, they are subject to specific important limitations. As the Supreme Court explained:

[W]e start with the principle that parolees have the same expectation of privacy in their homes as persons not convicted of crimes and not on probation or parole. Yet, that equal footing recognized under our Iowa Constitution predominantly exists in the context of the search and seizure by law enforcement officers for evidence of crimes. Unlike people not on parole from a sentence of incarceration resulting from a prior criminal conviction, parolees are under the supervision of the government pursuant to a written parole agreement. These agreements require the parolee to submit to searches and other governmental intrusions not permitted against people not on parole.

King, 867 N.W.2d 117-18 (internal citations omitted).⁶ This agreement is important because it “serve[s] to diminish the expectation of privacy of the parolee in relation to his parole officer by placing him on notice that” a home visit or a search may be conducted. *Id.*

⁶ While in other circumstances there are important distinctions between probationers and parolees, in the context of the privacy interest enjoyed in their homes the two groups are quite similar. *See generally King*, 867 N.W.2d at 120 (noting that the Iowa Supreme Court has in the past “observed the similarities between probation and parole”); *State v. Short*, 851 N.W.2d 474, 506 (Iowa 2014).

In this case, Defendant Brooks' expectation of privacy in his bedroom had been contractually limited by his probation agreement. As discussed in section II(A) above, he voluntarily agreed to make himself and his residence available for home visits by his probation officer and to submit to warrantless searches so long as they are supported by reasonable suspicion. Probation Agreement; App.21-24.

The second factor in the balancing test asks the court to consider the character of the intrusion. The intrusion at issue here was very limited in nature and justified by individualized suspicion. The intrusion consisted of an entry into the defendant's bedroom to take him into custody and remove him from his father's home.⁷ Only the defendant's privacy interests were implicated, as he father and sister requested the officer's presence in the house. This intrusion was limited and was not as extensive as a full probationary search. *King*, 867 N.W.2d at 109-10. Rather, it was more analogous to a simple home visit and it was supported by sufficient individualized suspicion. The officer not only had reasonable suspicion but had

⁷ The officers conducted a cursory search as well. However, because none of the evidence used against the defendant was discovered during that search, it is the legality of the entry and not the search which is at issue in this case. The question of whether a search conducted under these circumstances is justified is a question for another day.

probable cause to believe the defendant was in violation of his probation.⁸

Further, the limited intrusion was clearly conducted for probationary purposes. *See King*, 867 N.W.2d at 122-23 (“[F]or the special-needs analysis to apply, the reasons for the search must be the interest in supervising the reintegration of parolees into society, ‘not, or at least not principally, the general law enforcement goal of detecting crime.’”). Specifically, the entry was made by probation officers with the Department of Corrections and Defendant Brooks was arrested for a violation of his probation and not for a new substantive offense. Probation supervision “necessarily involves intrusion by government into the lives of [probationers] as they assimilate back into society.” *King*, 867 N.W.2d at 121-22. These intrusions are vital to achieving the dual policy purposes of probation,

⁸ The defendant’s refusal to open the door to probation officers seeking to do the home check was a violation of his probation and this violation was personally observed by the arresting officers. Tr. 10/22/14 P.17 L.15 – P.18 L.19; App.99-100; Probation Agreement; App.21-24. The defendant’s father and sister had also reported that the defendant was using methamphetamine and was behaving in an erratic manner, causing them to fear for their safety. Report of Violation; App.25-27; Tr. 10/22/14 P.6 L.23 – P.8 L.25; P.21 Ls.3-25; App.88-90, 103. This report by the defendant’s family was sufficient to provide probable cause for two more probation violations. Probation Agreement; App.21-24.

“rehabilitation of the parolees and maintaining public safety,” and are often considered “an essential ingredient to the success” of the probation and parole systems. *Id.* “Without reasonable intrusions, the goal and purpose of parole would be difficult, if not impossible, to accomplish.” *Id.*

As to the third element of the balancing test, the court must consider the nature and immediacy of the government concern at stake and the ability of the action taken to meet the concern. The governmental concern at stake in this case is the ability of the Department of Corrections to effectively and swiftly take into custody probationers under their supervision who present a safety concern to themselves and/or others or who otherwise are in violation of the terms of probation which were set out in order to facilitate rehabilitation. Both the public safety concerns and the interests in effectively encouraging rehabilitation which underlie these governmental concerns are legitimate and pressing and the actions taken in this case were directly related to addressing those concerns.

Further, the State has an interest in encouraging family members and friends of probationers to assist in their rehabilitation. The availability of a stable, drug free environment to which a

probationer can be released, like that offered to Defendant Brooks by his father, is extremely beneficial to both the State's and the probationer's interests in rehabilitation. If individuals like Defendant Brooks' father are not assured that they can call for and expect help from the Department of Corrections if the drug addicted probationer relapses and, being high on methamphetamine or other drugs, goes "out of his mind[,] "they may ... be less willing to help him—a sadly ironic result in a system designed to encourage reintegration into society." Tr. 10/22/14 P.17 Ls.6-14; App.99; *State v. Baldon*, 829 N.W.2d 785, 795 (Iowa 2013).

When conducting an inquiry into whether the special needs doctrine justifies an intrusion,

The question in every case must be whether the balance of legitimate expectations of privacy, on the one hand, and the State's interests in conducting the relevant search, on the other, justifies dispensing with the warrant ... requirement[] that [is] otherwise dictated by the [Constitution].

King, 867 N.W.2d at 136. In this case, the limited intrusion was justified by the State's significant interests. The defendant, a drug addict, had relapsed. Report of Violation; App.25-27. He was high on methamphetamine, had locked himself in his room using a knife, was

out of his mind, and had covered with feces. *Id.*; Tr. 10/22/14 P.16 L.17 – P.17 L.14; P.34 L.23 – P.35 L.3; App.98-99, 116-17. His father and sister called his probation officer seeking immediate assistance, fearing for their safety and requesting the defendant be removed from the house. Report of Violation; App.25-27. The Department of Corrections responded to this emergency situation immediately and did no more than was necessary to secure the safety of the defendant and his family. These actions were reasonable and, being justified by the special need doctrine, did not violate the defendant’s constitutional rights.

C. The entry into Defendant Brooks’ room was justified by the community caretaking exception.

The probation officers entrance into Defendant Brooks’ room was also separately justified under the community caretaking exception to the warrant requirement. Like the special needs exception, “[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.’” *State v. Kern*, 831 N.W.2d 149, 172 (Iowa 2013) (quoting *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973)). To establish this exception applies to an entry and seizure, like that which occurred in this case,

it must be shown that the officer was conducting a “bona fide community caretaking activity” and that “the public need and interest outweigh the intrusion upon the privacy of the citizen[.]” *Kern*, 831 N.W.2d at 173 (quoting *State v. Crawford*, 659 N.W.2d 537, 543 (Iowa 2003)). In determining whether the officer in this case was engaged in a bona fide community caretaking activity, it must be shown that “a reasonable person under the circumstances would have thought an emergency ... existed[.]”⁹ *State v. Carlson*, 548 N.W.2d 138, 141 (Iowa 1996).

In this case, the defendant’s probation officer received a call from members of the defendant’s family with whom the defendant resided. Tr. 10/22/14 P.6 L.23 – P.8 L.25; App.88-90. They asked for

⁹ The Iowa Supreme Court’s *Kern* decision discusses the two-step analysis from *Emerson* for determining the reasonableness of a search under the emergency aid exception. *Kern*, 831 N.W.2d at 173; *State v. Emmerson*, 375 N.W.2d 256, 259 (Iowa 1985). Under the *Emerson* analysis the State must meet both a subjective and an objective test with relation to the officer’s motivations for the entry. *Id.* The 1985 *Emerson* rule, however, was overturned in 1996 by *State v. Carlson*. 548 N.W.2d 138 (Iowa 1996). The Supreme Court in *Carlson* expressly overruled *Emerson* and held that only the objective portion of the test was relevant to the establishment of the emergency aid exception. *Id.* at 141-42. The State does not believe the Supreme Court in *Kern* intended to overturn a nearly twenty year old precedent without expressly saying so and, as such, the State believes only an objective test need be met here. That said, the State firmly believes the record in this case would be more than sufficient to meet a subjective test were such a showing necessary.

urgent assistance with removing the defendant from their residence. *Id.*; Tr. 10/22/14 P.16 L.17 – P.17 L.5; App.98-99. The defendant was high on methamphetamine, behaving erratically, and they were concerned for their safety. Tr. 10/22/14 P.6 L.23 – P.8 L.25; P.16 L.17 – P.17 L.5; App.88-90, 98-99. The defendant’s probation officer, being tied up in court, was unable to immediately respond to this emergency request for assistance and so sent other probation officers. Tr. 10/22/14 P.9 L.18 – P.10 L.1; App.91-92. These officers responded to the home of the defendant’s father and removed the defendant from the home to ensure the safety of the defendant, his father, and his sister. Tr. 10/22/14 P.17 L.6 – P.18 L.19; P.21 Ls.3-25; App.99-100, 103. Under these circumstances an objectively reasonable person would believe an emergency existed and that the course of action taken by the probation officers was reasonable, particularly given the defendant’s prior history of violence. PSI P.2-4, 9-10; App.13-17.

In this case it can also be established that the public interest outweighed the invasion of the defendant’s privacy. As discussed above in section II (B), the intrusion was limited in nature, the expectation of privacy was limited given the defendant’s agreement to

subject his residence to home visits, and the State interest in protecting two members of the defendant's household from danger was strong.

Given all these circumstances, the warrantless entry into Defendant Brooks' bedroom was justified under the emergency aid exception and did not violate the defendant's constitutional rights.

CONCLUSION

The exclusionary rule serves to bar the use of evidence in a criminal prosecution but not in a probation revocation proceeding. Further, even if the exclusionary rule were to apply, Defendant Brooks' right were not violated when probation officers entered his bedroom and took him into custody for violations of his probation. For both of these reasons, the district court did not err in denying the defendant's motion to suppress and the State respectfully requests this Court now affirm that decision.

REQUEST FOR NONORAL SUBMISSION

The State believes in this case the written briefs are sufficient to advance the arguments of the parties and the Court can fully and fairly resolve the defendant's claims without oral argument.

However, notice is hereby given that in the event the defendant is granted oral argument, counsel for the State also desires to be heard.

Respectfully submitted,

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