

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 DISTRICT COURT  
OF POLK COUNTY  
THE HONORABLE REBECCA GOODGAME EBINGER

---

APPELLANT'S APPLICATION FOR FURTHER REVIEW OF IOWA  
COURT OF APPEALS DECISION ENTERED FEBRUARY 10, 2016  
AND  
REQUEST FOR ORAL ARGUMENT

---

GRANT C. GANGESTAD  
GOURLEY, REHKEMPER, & LINDHOLM, P.L.C.  
440 Fairway Drive, Suite 210  
West Des Moines, IA 50266  
Telephone: (515) 226-0500  
Facsimile: (515) 244-2914  
Email: [gcgangestad@grllaw.com](mailto:gcgangestad@grllaw.com)  
ATTORNEY FOR APPELLANT

**QUESTION PRESENTED FOR REVIEW**

- I. WHETHER ARTICLE 1 SECTION 8 OF THE IOWA CONSTITUTION PROHIBITS CONSIDERATION OF ILLEGALLY OBTAINED EVIDENCE IN A PROBATION REVOCATION PROCEEDING.

**CERTIFICATE OF FILING**

I, Grant C. Gangestad, hereby certify that I filed the attached Brief with the Clerk of the Supreme Court, Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa, on February 19<sup>th</sup>, 2016, via the Iowa Electronic Document Management System.

GOURLEY, REHKEMPER,  
& LINDHOLM, P.L.C.



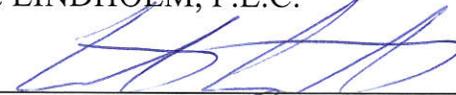
By: Grant C. Gangestad, AT0011504  
440 Fairway Drive, Suite 210  
West Des Moines, IA 50266  
Telephone: (515) 226-0500  
Facsimile: (515) 244-2914  
ATTORNEY FOR APPELLANT

**CERTIFICATE OF SERVICE**

I, Grant C. Gangestad, hereby certify that on February 19<sup>th</sup>, 2016, I served a copy of the attached brief on all other parties to this appeal by filing a copy of this brief with Iowa EDMS:

Iowa Attorney General  
Criminal Appeals Division  
Hoover State Office Building, 2<sup>nd</sup> Floor  
Des Moines, Iowa 50319

GOURLEY, REHKEMPER,  
& LINDHOLM, P.L.C.



By: Grant C. Gangestad, AT0011504  
440 Fairway Drive, Suite 210  
West Des Moines, IA 50266  
Telephone: (515) 226-0500  
Facsimile: (515) 244-2914  
ATTORNEY FOR APPELLANT

## TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW .....	ii
CERTIFICATE OF FILING .....	iii
CERTIFICATE OF SERVICE .....	iii
TABLE OF AUTHORITIES .....	v
STATEMENT SUPPORTING FURTHER REVIEW .....	1
APPELLANT'S BRIEF .....	4
COURSE OF PROCEEDINGS .....	4
STATEMENT OF FACTS.....	6
LEGAL ARGUMENT .....	8
I.    ARTICLE 1 SECTION 8 OF THE IOWA CONSTITUTION PROHIBITS CONSIDERATION OF ILLEGALLY OBTAINED EVIDENCE IN A PROBATION REVOCATION PROCEEDING .....	8
CONCLUSION .....	22
REQUEST FOR ORAL ARGUMENT .....	22
CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS .....	22
ATTORNEY'S COST CERTIFICATE .....	23

## TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<b><u>UNITED STATES SUPREME COURT CASES</u></b>	
<i>Hudson v. Michigan</i> , 547 U.S. 586 (2006) .....	9, 12, 14
<i>United States v. Leon</i> , 468 U.S. 897 (1984).....	15
<b><u>IOWA SUPREME COURT AND COURT OF APPEALS CASES</u></b>	
<i>Kain v. State</i> , 378 N.W.2d 900 (Iowa 1985).....	2, 15, 16, 18
<i>State v. Brooks</i> , 15-0101, (Slip Copy) (February 10, 2016 (Iowa App.).....	2, 14, 15, 17, 20
<i>State v. Cline</i> , 617 N.W.2d 277 (Iowa 2000).....	1, 9, 11, 12, 13
<i>State v. Cullison</i> , 173 N.W.2d 533 (Iowa 1970).....	10, 21
<i>State v. Height</i> , 117 Iowa 650, 91 N.W 935 (1902).....	10
<i>State v. James</i> , 393 N.W.2d 465 (Iowa 1986).....	17
<i>State v. Ochoa</i> , 792 N.W.2d 260 (Iowa 2010).....	1, 10, 15, 17
<i>State v. Reinier</i> , 628 N.W.2d 460 (Iowa 2001).....	8
<i>State v. Sheridan</i> , 121 Iowa 164, 96 N.W. 730 (1903).....	10
<i>State v. Shoemaker</i> , 801 N.W.2d 378 (Table), 2011 WL 1817844 (Iowa App.).....	18, 19, 20
<i>State v. Short</i> , 851 N.W.2d 474 (Iowa 2014).....	2, 9, 10, 11, 21
<i>State v. Swartz</i> , 278 N.W.2d 22 (Iowa 1979).....	2, 15, 16, 18, 19
<b><u>FEDERAL CASES</u></b>	
<i>United States v. Mounday</i> , 208 F.186 (D.Kan. 1913).....	13
<i>United States v. Winsett</i> , 518 F.2d 51, 54-55 (9 <sup>th</sup> Cir. 1975).....	16
<b><u>STATUTES</u></b>	
Iowa Rule of Appellate Procedure 6.1103 .....	3

## STATEMENT SUPPORTING FURTHER REVIEW

Further review of the Iowa Court of Appeals decision filed on February 10, 2016, is hereby requested. Appellant specifically requests further review to definitively answer the question of whether article 1 section 8 of the Iowa Constitution, prohibits consideration of illegally obtained evidence in a probation revocation proceeding. The Court's decision in *State v. Ochoa*, 792 N.W.2d 260, 267 (Iowa 2010) requires "independent analysis of our state search and seizure provisions." The Iowa Supreme Court has already conducted such an analysis regarding the purpose of Iowa's exclusionary rule in *State v. Cline*, 618 N.W.2d 277 (Iowa 2000). According to *Cline*, the purpose of the exclusionary rule under Article 1 Section 8 of the Iowa Constitution is three-fold: 1) remedy constitutional violations; 2) protect the integrity of the judiciary; and 3) deter police misconduct. *Id.* at 289. All three purposes are furthered by applying the exclusionary rule to illegally obtained evidence at probation violation proceedings.

Further, the Court has recently decided a line of cases under article 1 section 8 of the Iowa Constitution establishing that parolees and probationers both retain a constitutionally-protected right to privacy in their home shared by citizens not on probation or parole. *See Ochoa*, 792 N.W.2d

at 291-92 (parolees); see *State v. Short*, 851 N.W.2d 474, 506 (Iowa 2014) (probationers). In order to protect the constitutional right to privacy of probationers, the exclusion of illegally obtained evidence should be required for probationers and non-probationers alike, in criminal cases as well as probation revocation proceedings.

The Court of Appeals, in rejecting Mr. Brooks' argument that the Iowa Constitution required application of the exclusionary rule to probation violation proceedings, recognized the validity of the argument but felt bound to apply this Court's prior decisions of *Kain v. State*, 378 N.W.2d 900 (Iowa 1985) and *State v. Swartz*, 278 N.W.2d 22 (Iowa 1979). Neither *Kain* nor *Swartz*, however, adequately addressed any independent state ground for refusing to apply the exclusionary rule to probation revocations; and neither had the benefit of the Court's decisions in *Cline*, *Short*, or *Ochoa* when they were decided. The Court of Appeals, however, made it a point to articulate and emphasize the fact that the reasoning of *Cline* could be applied to this case. "Although we believe the reasoning of *Cline* could be extended to this case..., our supreme court has not expressly overruled, abrogated, or otherwise disapproved of its holding in *Kain*. We are bound by *Kain* and, therefore, affirm." *State v. Brooks*, 15-0101, at \*11 (slip copy) (Iowa App.) (February 10, 2016).

It may not have been the Court of Appeals place to extend the reasoning of *Cline* to probation violation proceedings but it is certainly this Court's place, if not duty, to do so. Further review of the Iowa Court of Appeals decision is justified as the Court of Appeals decision conflicts with the Iowa Supreme Court's decisions in *Ochoa Cline*, and *Short*; and the Court of Appeals decided a case that should have been retained by the Supreme Court. Ia.R.App.Pro. 6.1103(1)(b)(1) & (2). Further, the Court of Appeals has decided a case involving the constitutional rights of probationers under the Iowa Constitution, an area of law which has undergone significant metamorphosis in recent years, and should be settled by the Iowa Supreme Court. Ia.R.App.Pro. 6.1103(1)(b)(3).

## **APPELLANT'S BRIEF**

### **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.

### **Legal Argument**

#### **I. ARTICLE 1 SECTION 8 OF THE IOWA CONSTITUTION PROHIBITS CONSIDERATION OF ILLEGALLY OBTAINED EVIDENCE IN A PROBATION REVOCATION PROCEEDING.**

**Preservation of Error:** Appellant preserved error by filing a motion to suppress/motion to exclude evidence, obtaining a final ruling by the district court and court of appeals on that issue, and timely filing the instant Application for Further 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:** Iowa's exclusionary rule under Article 1 Section 8 of the Iowa Constitution must preclude consideration of illegally obtained evidence in a probation revocation proceeding by application of *State v. Cline*, 617 N.W.2d 277 (Iowa 2000). The Court has now stated unequivocally that the protections of article 1 section 8 of the Iowa Constitution apply with equal force to probationers and non-probationers alike. *See Short*, 851 N.W.2d at 506.

Since a warrantless search of Mr. Brooks' residence was performed in violation of his constitutional rights under article I section 8 of the Iowa Constitution, the only remedy for this constitutional violation is the exclusion of the illegally gathered evidence in his probation revocation proceeding. This Court's prior holding in *Cline* dictates such an application.

While the federal exclusionary rule has been stated to have the limited purpose of deterring police misconduct, *Hudson v. Michigan*, 547 U.S. 586 (2006), Iowa's exclusionary rule under Article 1 Section 8 of the Iowa Constitution, serves a much greater purpose. *Cline*, 617 N.W.2d at 289. It serves three separate functions: First, it serves to remedy constitutional violations; second, it protects judicial integrity; and third, just as its federal counterpart, it serves to deter police misconduct. *Id.*

## Remedy Constitutional Violations

For over a century, it has been the law in Iowa that the exclusionary of illegally obtained evidence serves to remedy constitutional violations. *Id.*

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).

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.

A parolee or probationer is afforded the same rights as any other person under the article I section 8 of the Iowa Constitution. *Ochoa*, 792 N.W.2d at 286, citing *State v. Cullison*, 173 N.W.2d 533, 537 (Iowa 1970); *Short*, 851 N.W.2d at 506. In *Cullison*, the Court specifically rejected the notion that a person’s Fourth Amendment rights are stripped or diluted by virtue of their status as a parolee. *Cullison*, 173 N.W.2d at 537. In several recent decisions, this Court has stated unequivocally that a probationer or parolee does not forego their protections under article 1 section 8 of the Iowa

Constitution simply by virtue of being a probationer or parolee. *See Short*, 851 N.W.2d at 506.

Thus, the Court has clearly stated there is no reason to treat a person who has been the subject of an illegal search any differently simply because they may be on parole or probation. An ordinary person who is not subject to probation conditions receives the full benefit of the exclusionary rule when subjected to an illegal search and seizure. A refusal to apply the exclusionary rule to probation revocation proceedings would fly in the face of the Court's clear language that places probationers on the same footing as ordinary citizens in the search and seizure context.

Without application of the exclusionary rule in probation violation proceedings, the victim of a constitutional violation has no remedy for the violation. The Court in *Cline* employed similar logic in refusing to adopt a good faith exception to the warrant requirement under Article I, Section 8 of the Iowa Constitution. 617 N.W.2d at 291. *Cline* stated, "an undesirable consequence of the adoption of a good faith exception is that persons subjected to an unconstitutional search or seizure would generally be left with no remedy at all." *Id.* "*There is simply no meaningful remedy available to one who has suffered an illegal search other than prohibiting the State from benefiting from its constitutional violation.*" *Id.* (emphasis added).

This argument applies with equal force when applied to illegal searches of probationers. If a right can't be protected and enforced, it really is no right at all. Without the application of the exclusionary rule, a probationer's right to be free from illegal searches and seizures has no meaning.

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.

#### Integrity of the Courts

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.* 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 based upon the illegal procurement of evidence. If the exclusionary were not applicable to probation violation proceedings, “[j]udges would become accomplices to the unconstitutional conduct of the executive branch if they allowed law enforcement to enjoy the benefits of the illegality.” *Id.* 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.” *Id.*, at 290; citing *United States v. Mounday*, 208 F.186, 189 (D. Kan. 1913).

#### Deter Police Misconduct

Contrary to the Court’s conclusion in *Kain* and other federal courts, application of the exclusionary rule does 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."

The Court of Appeals in the instant case seemed to agree:

We acknowledge the hard fact that Brooks faced no new criminal charges as a result of the search, and if the search was illegal, he is without a remedy unless the evidence is excluded in his probation-revocation proceedings. Thus, if the search was unconstitutional, Brooks' right to freedom from an illegal search of his home is cold comfort for a defendant facing a fifteen-year term of incarceration as a result of the search. *Moreover, there would be no deterrent effect for such an unlawful search. Suppression of the evidence would simply put the parties back into the same position they were in before the unlawful activity. See Cline, 617 N.W.2d at 289.*

*State v. Brooks*, 15-0101, at \*10 (emphasis added).

Finally, 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 she was in before the illegal search occurred, namely, back on probation under the strict supervision of a now alerted probation officer. “[E]ven when considering the public interest in preventing criminal violations, a search and seizure analysis should be precise and focused, not sweeping and sprawling with a one-size-fits-all approach.” *Ochoa*, 792 N.W.2d at 290. When the societal “costs” are compared to the stated purpose of the exclusionary rule, there is no other conclusion but that the exclusionary rule under the Iowa Constitution should be applied to probation violation proceedings.

The Court of Appeals, however, did not apply *Cline*’s rationale to the instant case. Instead, the Court of Appeals relied on the Court’s prior decisions in *Kain v. State*, 378 N.W.2d 900 (Iowa 1985), and *State v. Swartz*, 278 N.W.2d 22 (Iowa 1979). Because *Cline* did not specifically overrule *Kain*, they felt bound to apply that ruling to Mr. Brooks’ case. *Brooks* at \*11.

This Court’s outdated decisions in *Kain* and *Swartz* do not suggest any basis under article I section 8 of the Iowa Constitution for refusing to apply the exclusionary rule to probation revocation proceedings. In *Kain*, illegally obtained evidence was excluded in the defendant’s criminal trial.

*Kain*, 378 N.W.2d at 901. That excluded evidence was later used to revoke the defendant's probation. *Id.* The defendant appealed the decision, arguing that the federal exclusionary rule under the Fourth Amendment to the United States Constitution applied in a probation revocation proceeding. *Id.* The Iowa Supreme Court, following the interpretation of a Ninth Circuit Court of Appeals decision, found that the federal exclusionary rule did not apply to probation revocation proceedings because the sole purpose of the federal exclusionary rule, deter misconduct, was not furthered. *Id.* at 902 (citing *United States v. Winsett*, 518 F.2d 51, 54-55 (9<sup>th</sup> Cir. 1975)).

The *Kain* Court also "considered" the applicability of the exclusionary rule under article 1 section 8 of the Iowa Constitution. The Court determined that the exclusionary rule did not apply under the Iowa Constitution for two reasons: first, because the Court's "interpretation of article I, section 8 has quite consistently tracked with prevailing interpretations of the fourteenth amendment in deciding similar issues," and second, because a prior Iowa opinion, according to the court, adopted a constitutional balancing test "independently of any controlling federal precedent." *Id.* at 902-03 (citing *State v. Swartz*, 278 N.W.2d 22, 23-25 (Iowa 1979)).

The first purported rationale for refusing to apply the exclusionary rule under the Iowa Constitution is no longer a viable justification. The Iowa Supreme Court decided *State v. Ochoa* in 2010. In that opinion, the Court specifically rejected the application of a “lockstep” approach to interpretation of state constitutional provisions that the court adopted in prior opinions, including *Kain. Ochoa*, 792 N.W.2d at 267; *Brooks*, at \*9. “[R]ecently...we have tended to emphasize independence from the federal model.” *Ochoa*, 792 N.W.2d at 267. “[I]nterpretations of state constitutional law should be consistent with federal law when possible, but we have emphasized that ‘if precedent is to have any value it must be based on a convincing rationale.’” *Id.* (quoting *State v. James*, 393 N.W.2d 465, 472 (Iowa 1986) (Lavorato, J., dissenting)). “[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.

The holding of *Ochoa* specifically denounces the practice of blindly applying the rationale from federal search and seizure decisions without engaging in an independent analysis of the issue under corresponding search and seizure provisions of the Iowa Constitution. *Kain*’s purported rationale for refusing to apply the state exclusionary rule to probation revocation

proceedings demonstrates precisely the “lockstep” approach that the *Ochoa* Court condemned. The Court based their interpretation and subsequent refusal to apply the state exclusionary rule solely on the fact that state search and seizure provisions had traditionally paralleled the federal provisions. This approach was specifically proscribed by *Ochoa*. To the extent that *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, the *Kain* holding has been explicitly called into question by *Ochoa*.

*Ochoa* has also called into question the second basis for *Kain*’s holding under the state constitution. “[T]he [Iowa Supreme] Court characterized this [second] basis as a constitutional balancing test that was adopted ‘independently of any controlling federal precedent.’” *State v. Shoemaker*, 801 N.W.2d 378 (Table), 2011 WL 1817844, at \*3 (Iowa App.) (citing *Kain*, 378 N.W.2d at 902-03). However, the Court of Appeals stated that “the court’s characterization of the balancing test as ‘independent of any controlling federal precedent’ is at odds with the language of the opinion the [Iowa Supreme] Court cited— *Swartz*, 278 N.W.2d at 23–25.” *Id.*

In *Swartz*, the issue was whether the exclusionary rule applied to sentencing proceedings. *Id.* at 23. The *Swartz* court held:

Upon balancing the divergent policy considerations discussed, we conclude that evidence should not per se be inadmissible in a sentencing hearing solely upon the basis that, if tendered at trial, it would be subject to exclusion on constitutional grounds. We therefore decline to extend the exclusionary rule to those proceedings, absent some showing that the evidence in question was gathered in violation of the defendant's constitutional rights and for the express purpose of influencing the sentencing court. *Id.* at 26.

The Court of Appeals in *State v. Shoemaker*, however, observed, an omission of great significance in the *Swartz* opinion:

“[T]he *Swartz* court did not state that its holding was grounded in Article I, Section 8 of the Iowa Constitution. This calls into question the assertion in *Kain* that there was a state constitutional basis for the holding in *Swartz*. [W]e believe the court there employed a ‘lockstep’ rather than an ‘independent’ analysis of the state constitution. Specifically, the court canvassed several federal opinions, including four United States Supreme Court decisions that, in its view, indicated ‘a trend toward a restrictive application of the exclusionary rule’ in similar contexts.” *Id.* at 24–26.

*Shoemaker*, at \*3. Therefore, the *Swartz* decision actually relied solely on federal precedent without engaging in any independent analysis under any parallel provision of the Iowa Constitution, when it declined to apply the state exclusionary rule to sentencing proceedings. *See Swartz*, 278 N.W.2d at 23-25.

In fact, upon a careful reading of *Swartz*, one will see that the phrases “Iowa Constitution” and “article 1 section 8” are not even mentioned in the *Swartz* decision. “*Swartz* simply stands for the proposition that the *federal* exclusionary rule *grounded in the Fourth Amendment* to the United States

Constitution does not apply in a sentencing proceeding under the circumstances of that case.” (emphasis added). *Shoemaker*, at \*4. “*Swartz* says nothing about whether the state exclusionary rule applies to such a proceeding, and it does not articulate an independent basis under the state constitution for declining to extend the state exclusionary rule to sentencing proceedings.” *Id.* The Court of Appeals in Mr. Brooks’ case agreed with the *Shoemaker* court, stating that the *Kain* decision was not informed by the more recent decisions of *Cline* and *Short*, indicating that this issue should be revisited by the Iowa Supreme Court. *Brooks*, at \*10. Further, the Court of Appeals stated its belief that the holding of *Cline* could be extended to this case. *Id.* at \*11. Nevertheless, the Iowa Court of Appeals declined to reverse Mr. Brooks’ conviction simply because the basis for *Kain*’s holding has not been explicitly overruled by the Iowa Supreme Court. *Id.*

It is quite clear that the legal underpinnings for the holding in *Kain* were based upon then-existing notions of federal search and seizure law and not upon any independent Iowa constitutional basis. Under the mandate of *Ochoa*, it is imperative that the Court now engage in an independent analysis in determining the applicability of the state exclusionary rule under article I section 8 of the Iowa Constitution to illegally obtained evidence in probation revocation proceedings. In conducting this independent analysis it becomes

clear that the purposes of our exclusionary rule under article 1 section 8 of the Iowa Constitution are furthered by excluding illegally obtained evidence as set forth in *Cline*.

An independent analysis of the exclusionary rule's application under the Iowa Constitution becomes even more important when we consider the recent decisions concerning the constitutional rights of probationers. *Short*, *Baldon*, *Ochoa*, and even *Cline* were all decided after *Kain*. In light of these cases providing equivalent constitutional protection to probationers and non-probationers alike, it is absolutely imperative to determine how these cases bear upon the exclusionary rule under the Iowa Constitution by actually engaging in an independent analysis of that provision. Probationers do not sacrifice their right to be secure in their homes and affairs simply because of their status as probationers. *See Short*, 851 N.W.2d at 506. “[W]e believe it fairer and far more realistic that an Iowa [probationer’s article 1 section 8] rights, privileges, and immunities, be accorded the same recognition as any other persons.” *Cullison*, 173 N.W.2d at 537. If article I section 8 of the Iowa Constitution truly applies with equal force to probationers and ordinary persons alike, then the remedy for violations of that provision must likewise apply with equal force.

**Conclusion**

For the reasons set forth above, Appellant respectfully requests that this Court reverse the Iowa Court of Appeals' ruling that the illegally obtained evidence could be considered to revoke her probation.

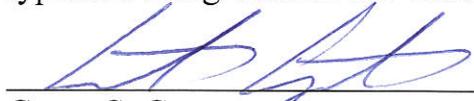
**Request for Oral Argument**

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 4,594 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1)

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in size 14 font.

  
\_\_\_\_\_  
Grant C. Gangestad

2/19/2016  
\_\_\_\_\_  
Date

**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 \$6.50, and that amount has been paid in full by me.

Respectfully Submitted,

GOURLEY, REHKEMPER  
LINDHOLM, P.L.C.



---

By: Grant C. Gangestad, AT0011504  
440 Fairway Drive, Suite 210  
West Des Moines, IA 50266  
Telephone: (515) 226-0500  
Facsimile: (515) 244-2914  
ATTORNEY FOR APPELLANT

**IN THE COURT OF APPEALS OF IOWA**

No. 15-0101  
Filed February 10, 2016

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**TROY RICHARD BROOKS,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Polk County, Rebecca Goodgame Ebinger, Judge.

The defendant appeals from the district court's denial of his motion to suppress evidence in his probation-revocation hearing. **AFFIRMED.**

Grant C. Gangestad of Gourley, Rehkemper, & Lindholm, P.L.C., West Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Mary A. Triick, Assistant Attorney General, for appellee.

Heard by Danilson, C.J., and Vogel and Potterfield, JJ.

**DANILSON, Chief Judge.**

This discretionary appeal involves the issue of whether evidence obtained from a warrantless search of a probationer's residence should be suppressed and excluded as evidence in the resulting probation-revocation hearing. The defendant, Troy Brooks, maintains the search of his room was in violation of his Iowa Constitution article 1, section 8 expectation of privacy and the exclusionary rule should be applied to any evidence obtained.

The individuals performing the search bring to mind the movie character, Butch Cassidy, and his often repeated question, "Who are those guys?"<sup>1</sup> Here Butch Cassidy's question arises because the home search was conducted by individuals labeled as probation officers by the State, but who have the appearance of law enforcement officers.

We affirm because we believe we are bound by the supreme court's holding in *Kain v. State*, 378 N.W.2d 900, 902–03 (Iowa 1985), determining the exclusionary rule is not applicable to Brooks' probation-revocation proceedings.

**I. Background Facts and Proceedings.**

On October 22, 2013, Brooks pled guilty to the charges of conspiracy to manufacture a controlled substance (methamphetamine) without the sentencing enhancements and possession of a controlled substance (methamphetamine), third offense, without the habitual-offender enhancement.

---

<sup>1</sup> As Butch Cassidy and the Sundance Kid attempted to evade lawmen, even to the extent of traveling to Bolivia, the two were astounded that the same lawmen continued to track them to bring them to justice, evoking Cassidy to ask, "Who are those guys?" BUTCH CASSIDY AND THE SUNDANCE KID (Twentieth Century Fox Film Corporation 1969).

Brooks received a suspended sentence and was placed on probation for a period of two years. As part of his probation agreement, Brooks agreed to “submit to a search of [his] person, property, residence, vehicle, or personal effects at any time, with or without a search warrants or arrest warrant, if reasonable suspicion exists, by a peace officer or probation/parole officer.” Additionally, he also agreed he would “not possess, ingest, or otherwise use any non-prescribed drug.”

On September 15, 2014, Brooks was renting a room in his family’s home. His father and sister called Michael Evans, Brooks’ probation officer. Evans was at a court hearing in a different county and was unable to answer his phone. The pair left a voicemail stating Brooks had been using methamphetamine in the home and he was locked in his bedroom—where he had been since the day prior. Additionally, they stated Brooks used drugs “at least three times in the last month,” had been missing work because of the drug use, and had been using baking soda to cover his drug testing. They requested immediate assistance at the home. After he received the message, Evans contacted his supervisor and two of his “coworkers,” Ryan Smith and Lance Wignall, from the fugitive or warrant unit. He asked them to make a home visit in response to the call because he was unable to leave the court hearing.

The status of these “coworkers” was the subject of some questioning of Wignall at the suppression hearing.<sup>2</sup> Wignall explained that he is employed with the “Fifth Judicial District Department of Corrections” and he serves “in the

---

<sup>2</sup> Pursuant to Iowa Code section 907.2 (2013), “Probation officers employed by the judicial district department of correctional services, while performing the duties prescribed by that department, are peace officers.”

fugitive unit” and is a “probation officer.” He also testified his uniform says “Polk County Sheriff” and “police” on it and he carries a gun and handcuffs. He has been trained at the Iowa Law Enforcement Academy. He testified his duties differ from the average probation officer in that his “primary responsibility [is] for the apprehension of folks that abscond supervision as well as deal with situations that include home visits and high-risk situations.” Evans also testified that he is employed with the Fifth Judicial District Department of Corrections as a fugitive unit officer, “which is also classified as a probation/parole officer.” Smith did not testify at the suppression hearing.

Wignall and Smith responded to the call. When they arrived at the home, Brooks’ father answered the door. Brooks’ father told them that Brooks was upstairs and stated, “He’s out of his mind.” Wignall and Smith then went upstairs and announced themselves. They attempted to enter Brooks’ room, but the door was locked or held shut. Eventually, the door opened, and they placed Brooks in handcuffs. Brooks and the room were covered in feces. Wignall and Smith noted that a large knife was on the ground, which appeared to have been used to prevent the door from opening by wedging it between the trim and the door. They conducted a cursory search of the room, and Brooks admitted that he had relapsed and used methamphetamine. Brooks stated he has a tendency to be “out of his mind” when he used the drug. Wignall and Smith arrested Brooks for probation violation; he was not charged with any new crimes as a result of the arrest.

Two days later, on September 17, 2014, Evans filed a report of a probation violation by Brooks.

Brooks filed a motion to suppress the evidence obtained during the search, and a hearing was held on October 22, 2014. At the hearing, Evans testified he would characterize the exchange with Brooks as a home visit because the “design of it . . . [was] to make contact and check for compliance.” He also testified it was not a typical incident and was better classified as an emergency. He stated both Wignall and Smith were his coworkers and were also probation and/or parole officers. Wignall testified he and Smith announced themselves as “probation and parole” once they reached Brooks’ door. Brooks appeared to be disoriented when the door to his room opened, and it was unclear if Brooks had opened the door or if the continued knocking had knocked the knife loose and the door free. Additionally, Brooks’ father had consented to Wignall and Smith entering the home and Brooks’ room. On cross-examination, Wignall testified he is a certified peace officer—his uniform states “police” and “Polk County Sheriff” on it and he wears a visible firearm and handcuffs. He also testified that although he is a parole/probation officer, he does not supervise cases and does not, as a typical part of his job, conduct home visits. Wignall’s job duties are “with the warrant team,” and his “specific function is to make arrests for other probation or parole officers” when the probationer or parolee has violated the conditions. Brooks also testified at the suppression hearing. He testified Wignall and Smith identified themselves as “warrant team” when they knocked on his door and they eventually forced themselves in, which caused damage to the door frame. Additionally, Brooks admitted he had used methamphetamine at a friend’s house on September 15, 2014, and he was still under the effect of the methamphetamine when Wignall and Smith arrived at the

residence. It was undisputed they did not have a warrant and did not provide Brooks his *Miranda* rights.<sup>3</sup>

The district court denied Brooks' motion, finding that his article 1, section 8 privacy rights were not violated because supervision of probationers is a "special need" of the State that justifies a departure from the typical warrant requirement. Additionally, the court determined that even if Brooks' rights had been violated, any evidence obtained was not subject to exclusion in a probation-revocation proceeding.

In the subsequent probation-revocation hearing, on January 9, 2015, the district court found by a preponderance of the evidence that Brooks had violated the terms of his probation. His probation was revoked, and the original sentence was imposed.

Brooks filed an application for discretionary review of the district court's decision to revoke his probation based on evidence obtained through the warrantless search. Our supreme court granted the application and transferred the case to us.

## **II. Standard of Review.**

Claims the district court failed to suppress evidence obtained in violation of the Iowa Constitution are reviewed de novo. *State v. Short*, 851 N.W.2d 474, 478 (Iowa 2014).

---

<sup>3</sup> At the suppression hearing, Brooks maintained his statement about using methamphetamine should be suppressed on the grounds that his *Miranda* rights were violated. He does not raise that argument here.

### III. Discussion.

Brooks maintains the search of his room violated his article 1, section 8 privacy rights. He maintains the evidence obtained as a result of the intrusion should have been suppressed and excluded from the court's consideration at his probation-revocation hearing. In response, the State maintains even if there was an unconstitutional search of Brooks' room, any evidence obtained—including Brooks' statement about having used methamphetamine—was properly considered by the district court during the probation-revocation hearing. We agree with the State's assertion.

In *Kain*, our supreme court considered whether the exclusionary rule is applicable to a probation-revocation hearing. 378 N.W.2d at 902–03. The court was asked to consider the question under both the Fourth Amendment to the Federal Constitution and article 1, section 8 of the Iowa Constitution. *Kain*, 378 N.W.2d at 901. In considering federal precedent, the court cited a Ninth Circuit case, which stated:

An important aspect of our probation system is the placing of certain restrictions on the probationer, such as the requirement that he not associate with criminals or travel outside the judicial district. 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.

*Id.* at 902 (citing *United States v. Winsett*, 518 F.2d 51, 53–55 (9th Cir. 1975)). For the foregoing reasons, the court concluded the defendant’s federal claim failed. *Kain*, 378 N.W.2d at 902.

The court also considered and denied the defendant’s claim that the exclusionary rule was applicable to probation revocation hearings under article 1, section 8 of the Iowa Constitution. *Id.* The court rejected the defendant’s contention for two reasons. *Id.* First, the court stated its “interpretation of article 1, section 8 has quite consistently tracked with prevailing federal interpretations of the fourteenth amendment in deciding similar issues.” *Id.* Second, the court referenced its prior consideration of competing policy considerations and adoption of a constitutional balancing test to conclude the exclusionary rule should not be extended to probation revocation proceedings. *Id.* at 902–03 (citing *State v. Swartz*, 278 N.W.2d 22, 23–25 (Iowa 1979)).<sup>4</sup> Specifically, the court in *Kain* stated:

[One reason] we reject *Kain*’s plea for a different interpretation under the state constitution is our belief that we gave full consideration to all of the competing policy issues arising in the present case in [*Swartz*, 278 N.W.2d at 23-25]. In that case, we adopted, independently of any controlling federal precedent, a constitutional balancing test which does not require the extension of the exclusionary rule into the present area. We are reluctant to

---

<sup>4</sup> In *Swartz*, the court stated:

Upon balancing the divergent policy considerations discussed, we conclude that evidence should not per se be inadmissible in a sentencing hearing solely upon the basis that, if tendered at trial, it would be subject to exclusion on constitutional grounds. We therefore decline to extend the exclusionary rule to those proceedings, absent some showing that the evidence in question was gathered in violation of the defendant’s constitutional rights and for the express purpose of influencing the sentencing court. No such purpose was shown, or even claimed, in the present case.

278 N.W.2d at 26.

retract from these views in the present case and therefore reject Kain's claims under the state constitution.

378 N.W.2d at 902–03.

Since deciding *Kain*, our supreme court has rejected the “lockstep” approach to interpretation of the state constitutional provisions. See *State v. Ochoa*, 792 N.W.2d 260, 266–67 (Iowa 2010) (“[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.”).

Additionally, in *State v. Cline*, 617 N.W.2d 277, 293 (Iowa 2000), *abrogated on other grounds by State v. Turner*, 630 N.W.2d 601, 606 n.2 (Iowa 2001), our supreme court parted ways with the United States Supreme Court when it declined to adopt a good faith exception to the exclusionary rule under the Iowa Constitution. Much of the court's reasoning concerned its disagreement with the United States Supreme Court's limitations on the purpose and use of the exclusionary rule. See *Cline*, 617 N.W.2d at 288–92. As our supreme court expressed, it is not true that the “only purpose [of the exclusionary rule] is to deter police misconduct and that the rule has no laudatory effect on the actions of the judicial or legislative branches.” *Id.* at 289. The rule “provide[s] a remedy for the constitutional violation and protect[s] judicial integrity.” *Id.* Additionally, the rule “merely places the parties in the position they would have been in had the unconstitutional search not occurred, and the State is deprived only of that to which it was not entitled in the first place.” *Id.*

Since *Kain*, our supreme court has also decided a line of cases under article 1, section 8 of the Iowa Constitution establishing that parolees and probationers both retain a constitutionally-protected expectation of privacy in their home. See *Ochoa*, 792 N.W.2d at 291–92 (parolees); see *Short*, 851 N.W.2d at 506 (probationers). While the right has been extended, we acknowledge that our supreme court has not expanded the remedy—the application of the exclusionary rule—to probation-revocation proceedings. See *Short*, 851 N.W.2d at 505 (“There is substantial authority, for instance, for the proposition that while evidence obtained through home visits, or searches by probation officers, may not be used in new criminal prosecutions, it may be used for purposes of establishing a violation of probation or parole.”).

Because *Kain* preceded *Cline* and *Short*, the principles espoused in *Kain* fail to consider the right of probationers to be free from unconstitutional searches of their homes when deciding the application of the exclusionary rule. We acknowledge the hard fact that Brooks faced no new criminal charges as a result of the search, and if the search was illegal, he is without a remedy unless the evidence is excluded in his probation-revocation proceedings. Thus, if the search was unconstitutional, Brooks’ right to freedom from an illegal search of his home is cold comfort for a defendant facing a fifteen-year term of incarceration as a result of the search. Moreover, there would be no deterrent effect for such an unlawful search. Suppression of the evidence would simply put the parties back into the same position they were in before the unlawful activity. See *Cline*, 617 N.W.2d at 289.

Although we believe the reasoning of *Cline* could be extended to this case if the search was illegal,<sup>5</sup> our supreme court has not expressly overruled, abrogated, or otherwise disapproved of its holding in *Kain*.<sup>6</sup> We are bound by *Kain* and, therefore, affirm. Thus, we need not answer Butch Cassidy's intriguing question of "Who are those guys?"

#### **IV. Conclusion.**

Because our supreme court has not overruled its holding in *Kain* and we do not believe it is our place to do so, we affirm the district court's denial of Brooks' motion to suppress evidence obtained during the warrantless search of his room.

**AFFIRMED.**

---

<sup>5</sup> We have assumed for purposes of our analysis that the search was unconstitutional. To determine the constitutionality of the search, we would be required to determine if Wignall and Smith were probation officers or law enforcement officers. See *Short*, 851 N.W.2d at 506 (concluding that in the absence of a search warrant or some other exception, a search of a probationer's home by law enforcement is in violation of article I, section 8 of the Iowa Constitution).

<sup>6</sup> Our court has had the opportunity to decide a similar case, *State v. Shoemaker*, No. 10-1294, 2011 WL 1817844, at \*4 (Iowa Ct. App. May 11, 2011) (holding the district court properly considered evidence obtained through a warrantless search in a probation-revocation hearing).