

IN THE SUPREME COURT OF IOWA

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STATE OF IOWA,	)	SUP. CT. NO. 15-0101
Plaintiff-Appellee,	)	Polk County Nos. FECR264352 FECR264736
vs.	)	<b>RESISTANCE TO APPLICATION FOR DISCRETIONARY REVIEW</b>
TROY RICHARD BROOKS,	)	
Defendant-Appellant.	)	

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COMES NOW the State of Iowa and resists the defendant's application for discretionary review and in support thereof states:

1. On December 23, 2013, the defendant was sentenced to two terms of ten and two years to be served concurrently and those sentences were suspended. A report of a violation was filed on September 16, 2014. On January 9, 2015, the court revoked the suspended sentences.
  
2. Within the probation revocation proceeding, the defendant filed a motion to suppress evidence to be used in the proceeding. On December 19, 2014, the court denied the motion to suppress. The defendant seeks discretionary review asserting that the exclusionary rule should apply in probation revocation proceedings.

3. The district court found the relevant facts as follows:

On September 15, 2014, Probation/Parole Officer Michael Evans received . . . messages . . . from Defendant's sister, with input from Defendant's father . . . report[ing] that Defendant was using methamphetamine again and had locked himself in his room. They reported Defendant had been covering up drug usage. . . . These family members were upset and were requesting the assistance of Officer Evans in dealing with Defendant.

\* \* \*

Officer Evan's also received an urgent message from the head of Freedom House, the facility where Defendant's girlfriend was then residing. This phone call relayed information . . . Defendant was described as a "real mess" and the caller requested the probation office respond to Defendant's address to deal with the situation.

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Both Defendant's father and sister wanted Defendant out of the home.

\* \* \*

The probation officers kept knocking on [Defendant's bedroom] door and it eventually opened. Defendant appeared confused and disoriented as the door opened.

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4. It is not entirely clear from the documents submitted with the application whether any physical evidence was discovered in the room. Presumably, the defendant's statements, a knife, and, perhaps, his physical appearance were the evidence seized.

5. First, as an unassailable principle, under the federal constitution, the exclusionary rule does not apply to probation or parole revocation hearings. *Pennsylvania Board of Probation & Parole v. Scott*, 118 S. Ct. 2014 (1998); see also *Griffin v. Wisconsin*, 483 U.S. 868 (1987) and *Minnesota v. Murphy*, 465 U.S. 420, 435 n. 7, 104 S.Ct. 1136, 79 L.Ed.2d 409 (1984). Most, if not all federal jurisdictions have followed the suggestion made by the Supreme Court in *Murphy*. *United States v. Finney*, 897 F.2d 1047, 1048 fn. 3 (10<sup>th</sup> Cir. 1990) (citing *United States v. Bazzano*, 712 F.2d 826, 830-34 (3d Cir.1983), cert. denied, 465 U.S. 1078, 104 S.Ct. 1439, 79 L.Ed.2d 760 (1984); *United States v. Frederickson*, 581 F.2d 711, 713 (8th Cir.1978); *United States v. Winsett*, 518 F.2d 51, 53-55 (9th Cir.1975); *United States v. Farmer*, 512 F.2d 160, 162-63 (6th Cir.), cert. denied, 423 U.S. 987, 96 S.Ct. 397, 46 L.Ed.2d 305 (1975); *United States v. Brown*, 488 F.2d 94, 95 (5th Cir.1973); *United States v. Hill*, 447 F.2d 817, 819 (7th Cir.1971); *United States ex rel. Sperling v. Fitzpatrick*, 426 F.2d

1161, 1163 (2d Cir.1970) (parole revocation). A single federal circuit dissents. *United States v. Workman*, 585 F.2d 1205, 1211 (4th Cir.1978). The Second Circuit strikes a compromise. *Sperling v. Fitzpatrick*, 426 F.2d 1161, 1162–63 (2d Cir.1970). Similarly, the States have found the rule inapplicable with certain exceptions not applicable here. *People v. Lazlo*, 206 Cal.App.4th 1063, 1070 (2012); *State v. Oliphant*, 115 Conn.App. 542, 544, 973 A.2d 147, cert. denied, 293 Conn. 912, 978 A.2d 1113 (2009); *State v. Thackston*, 716 S.E.2d 517, 59-20 (Ga. 2011); *Henderson v. State*, 544 N.E.2d 507, 512–513 (Ind.1989) (exclusion only if it was seized as part of a continuing plan of police harassment or in a particularly offensive manner); *State v. Johansen*, A.3d \_\_\_\_\_ (Maine 2014) (no exclusionary rule unless proof of “widespread police harassment or serious due process violation); *Commonwealth v. Vincente*, 405 Mass. 278, 280 (1989) (no suppression absent egregious, outrageous police conduct); *State v. Hayes*, 190 S.W.3d 665 (Tenn.Crim.App.2005) (the exclusionary rule is not applicable in a probation revocation hearing unless the evidence is obtained as a result of police harassment or obtained in a particularly offensive manner). The “great majority of jurisdictions” take the view that the exclusionary rule does not preclude the use of evidence obtained as the result of an unreasonable search or seizure or fifth amendment violation in a probation

revocation proceeding. Phillip E. Hassman, Admissibility, in state probation revocation proceedings, of evidence obtained through illegal search and seizure, 77 A.L.R.3<sup>rd</sup> 636, at § 3 (originally published in 1977).

6. For the past twenty-five years, Iowa has operated under the principle that neither the Fourth Amendment nor Article 1, Section 8 of the Iowa Constitution requires the exclusion of illegally obtained evidence in probation revocation proceedings. *Kain v. State*, 378 N.W.2d 900, 901-03 (Iowa 1985). In *Kain*, the Court weighed the same type of competing policy interests raised by the defendant and unequivocally concluded that the exclusionary rule under the Iowa Constitution did not apply in a probation revocation proceeding. *Id.* at 902-03. *Kain* should remain the law.

“From the very beginning of this court, we have guarded the venerable doctrine of stare decisis and required the highest possible showing that a precedent should be overruled before taking such a step.” *McElroy v. State*, 703 N.W.2d 385, 394 (Iowa 2005) (quoting *Kiesau v. Bantz*, 686 N.W.2d 164, 180 n.1 (Iowa 2004) (Cady, J., dissenting)). The doctrine of stare decisis is exceedingly important “as a force of stability and predictability in the law.” *Barreca v. Nickolas*, 683 N.W.2d 111, 122 (Iowa 2004). The doctrine

enhances the efficiency of judicial decision making, allowing judges to rely on settled law without having to reconsider the wisdom of prior decision in every case they confront, and because it fosters predictability in the law, permitting litigants and potential litigants to act in the knowledge that precedent will not be overturned lightly and ensuring that they will not be treated unfairly as a result of the frequent or unanticipated changes in the law.

*In re Marriage of Gallagher*, 539 N.W.2d 479, 484 (Iowa 1995) (Ternus, J., dissenting) (quoting *Teague v. Lane*, 489 U.S. 288, 332, 109 S. Ct. 1060, 1087, 103 L. Ed. 2d 334 (1989)).

Furthermore, the *Kain* decision is not “clearly erroneous” so as to justify the abandonment from prior precedent. *See State v. Liddell*, 672 N.W.2d 805, 813 (Iowa 2003) (stating “[s]tare decisis ‘should not be invoked to maintain a clearly erroneous result’”). As set forth above, the “great majority of jurisdictions” follow the principles set forth in *Kain*—that the exclusionary rule does not preclude the use of evidence obtained as the result of an unreasonable search or seizure in probation revocation proceedings. Phillip E. Hassman, Admissibility, in state probation revocation proceedings, of evidence obtained through illegal search and seizure, 77 A.L.R.3<sup>rd</sup> 636, at § 3 (originally published in 1977). In part, this is because, as observed by the Ninth Circuit,

[t]he primary purpose of probation, which has become an integral part of our penal system, is to promote the rehabilitation of the criminal by allowing him to integrate into society as a constructive individual, without being confined for the term of the sentence imposed. 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.

*United States v. Winsett*, 518 F.2d 51, 54-55 (9<sup>th</sup> Cir. 1975); see also *United States v. Montez*, 952 F.2d 854, 857-58 (5<sup>th</sup> Cir. 1992) (stating the *Winsett* reasoning “has been followed by the vast majority of other courts which have dealt with the issue”).

The defendant suggests that *State v. Cline* and a recent series of cases such as *State v. Ochoa*, 792 N.W.2d 260 (Iowa 2010), *State v. Baldon*, 829 N.W.2d 785 (Iowa 2013); *State v. Kern*, 831 N.W.2d 149 (Iowa 2013); and *State v. Short*, 851 N.W.2d 474 (Iowa 2014) have overruled *Kain*. Yet, it is significant that not one of those cases has addressed the notion of special needs searches in probation and parole situations. Even *Cline* recognized

the court's reluctance to extend the scope of the exclusionary rule to sentencing and probation revocation proceedings and noted the rule's primary context – criminal prosecutions. 617 N.W.2d 277, 287 (Iowa 2000).

The Court said

the exclusionary rule in Iowa has a mixed history, beginning with the bold adoption of the rule in 1902, our subsequent abandonment of the rule in the face of overwhelming authority from other states rejecting the rule, our benign acceptance of the rule after *Mapp*, and finally our recent cases limiting the rule yet preserving its fundamental role in criminal prosecutions.

It does not follow from *Cline*, a decision that recognized purposes other than deterring police misconduct existed for the exclusionary rule, that the exclusionary rule should apply in probation and parole revocations, especially because the fundamental question has not been answered, that is, whether a warrantless search of a probationer or parolee's home is an "illegal" search and seizure. The question is whether a search of a probationer for the purpose of fulfilling probation needs is unreasonable. The search here, if any, was justified because the maintenance of Iowa's probation and/or parole system presents "exceptional circumstances in which special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impracticable." *New Jersey v.*

*TLO*, 469 U.S. 325, 351 (1985) (Blackmun, J. concurring); *cf. Griffin v. Wisconsin*, 483 U.S. 868, 875-76 (1987) (holding that Wisconsin’s maintenance of a probation system constitutes a special need, justifying departure from the ordinary warrant and probable cause requirements of the Fourth Amendment). It was not by its nature an “illegal search” and did not involve “illegally seized” evidence. *Cline* and the cases that followed may suggest that when police officers violate Article I, section 8 in conducting a warrantless search, then the exclusionary rule would apply in a probation or parole revocation hearing, a position that State does not concede, however it does not follow that if a probation or parole officer searches a probationer or parolee’s home to further the purposes of the conditional release that the exclusionary rule should apply to what should be a legal search and a legal seizure.

Here the district court found that the probation officers were responding to a request for help from the family of the defendant in whose home the defendant was living. The family was concerned that the defendant was using methamphetamine and was out of control. They wanted him out of the house.

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7. Although not a typical interlocutory appeal request, this application sought before the conclusion of the process in the trial court is in the nature

of an interlocutory appeal. This Court may grant an application for interlocutory appeal if: (1) the ruling involves substantial rights, (2) the ruling will materially affect the final decision, and (3) determination of the issue will better serve the interests of justice. *Banco Mortgage Co. v. Steil*, 351 N.W.2d 784, 787 (Iowa 1984). However, interlocutory appeals are permitted only sparingly. *Knauss v. City of Des Moines*, 357 N.W.2d 573, 576 (Iowa 1984). Only in exceptional situations where the interests of sound and efficient judicial administration are best served will an interlocutory appeal be granted. *Banco Mortg. Co. v. Steil*, 351 N.W.2d 784 (Iowa 1984). The party seeking to appeal at an early stage of the district court proceedings has the heavy burden to show that the likely benefit to be derived from early appellate review outweighs the likely detriment and therefore satisfies the requirement that the interests of justice be better served. Further, discretionary review will be granted only where an order presents an issue of importance to the bench and bar. Iowa Code section 814.6(2)(2). The issue of the special needs doctrine is already before the Court in *State v. King*, Sup. Ct. No. 13-1061. Further, this particular case contains other arguments such as consent and exigency which cloud the

claim concerning the exclusionary rule. Finally, it is not clear that any of the evidence seized would be required to revoke the defendant's probation. Fully three witnesses were apparently prepared to say that the defendant was using methamphetamine. Applying a preponderance of the evidence standard, revocation would have occurred even if an exclusionary rule had been applied.

WHEREFORE, the State respectfully asks that the defendant's application for discretionary review be denied.

Respectfully submitted,

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