IN THE SUPREME COURT FOR THE STATE OF IOWA
NO. 20-1549

STATE OF IOWA,
Plaintiff-Appellee

vs.

SANTOS RENE TORRES
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY,
HONORABLE BRENDAN GREINER AND HONORABLE KEVIN PARKER

APPLICANT-APPELLANT'S APPLICATION FOR FURTHER REVIEW OF THE DECISION OF THE IOWA COURT OF APPEALS FILED MAY 25, 2022 PURSUANT TO IOWA R. APP. P. 6.205(2)

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that I e-filed the Applicant-Appellant's Application for Further Review with the Electronic Document Management System with the Appellate Court on the 14th day of June 2022.

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I hereby certify that on the 14th day of June 2022, I did serve the Applicant-Appellant's Application for Further Review on Appellant, listed below, by mailing one copy thereof to the following Applicant-Appellant:

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QUESTIONS PRESENTED FOR REVIEW

I: Is a person seized for 4th amendment purposes when officers begin to limit their freedom of movement, instruct them on what to do, follow them to their home, and they are not free to leave?

II: Does the community caretaking apply for a warrantless entry into a home?

III: Are there exigent circumstances justifying warrantless entry into a home when the officers have only suspicion of intoxication?

IV: Are there exigent circumstances to enter a home when law enforcement concedes they had no concern that children were unsafe?

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STATEMENT SUPPORTING FURTHER REVIEW

COMES NOW, the Appellant, Santos Torres, and hereby applies for further review of this case before the Iowa Supreme Court. In support of his application, Appellant respectfully states:

1. This matter was timely appealed and the case transferred to the Iowa Court of Appeals by this Court.

2. On May 25, 2022, the Iowa Court of Appeals entered its decision and opinion affirming the decision of the District Court, Hon. William Kelly. A true and correct copy of the Iowa Court of Appeals decision is attached hereto.

3. Pursuant to Iowa R. App. P. 6.205(2), Appellant applies for further

review.

4. Further review is appropriate in this case as the Iowa Court of Appeals issued an opinion in this matter in conflict with the decisions of the Iowa Supreme Court on an important matter. Iowa R. App. P. 6.1103(1)(b)(1). First, it is in conflict with the Iowa Supreme Court's precedent in State v. Wilson, 968 N.W.2d 903, 911 (Iowa 2022), that "police intrusion into the home implicates the very core of the Fourth Amendment to the United States Constitution" and that the exceptions to the warrant requirement for the home are "jealously and carefully drawn, in keeping with the centuries-old principle that the home is entitled to special protection." Id. (cleaned up). The majority in the Iowa Court of Appeals have expanded exceptions to the warrant requirement beyond what is reasonable.

5. The case is also in conflict with State v. Reinders, 690 N.W.2d 78, 82 (Iowa 2004) and State v. Fogg, 936 N.W.2d 664, 669 (Iowa 2019), particularly with the Reinders holding that "[a] seizure occurs when an officer by means of physical force or show of authority in some way restrains the liberty of a citizen." Officers in this case ordered Mr. Torres "to drive his vehicle to another designated location" then "[t]he officer followed him as he went toward the patrol car and told him when he could talk to his wife" then "followed Torres into the house" where "officers followed Torres to the bathroom and waited outside the door until he exited." State v. Torres, 2022 WL 1658371, at *6 (Iowa Ct. App. 2022) (Vaitheswaran, P.J.,

dissenting). However, the majority did not agree that officers had seized Mr. Torres outside of his home. See id. at *3.

6. The case is also in conflict with State v. Coleman, 890 N.W.2d 284, 290 (Iowa 2017) that "the lawfulness of the seizure" ended when the "reasonable suspicion for the stop had been completely dispelled". To justify the warrantless entry into the home, the majority cited the need to complete the criminal investigation and to take care of the children. However, "[a]lthough the deputy cited the need to go inside the house to assist with the children, their grandmother was in the home for the express purpose of supervising them. Notably, the Carlisle officer testified he had no concern at that time that the children were unsafe. There also was no evidence that the deputy fulfilled his stated purpose of supervising the children. In sum, the deputy's entry into the home had nothing to do with the children and everything to do with Torres." State v. Torres, 2022 WL 1658371, at *7 (Iowa Ct. App. 2022) (Vaitheswaran, P.J., dissenting).

7. The case is also in conflict with State v. Lewis, 675 N.W.2d 516, 525 (Iowa 2004) that exigent circumstances for a warrantless entry must also have probable cause and that suspicions are not probable cause. While the child protective worker has observations of Mr. Torres's intoxication, her beliefs could not be imputed to officers. State v. Torres, 2022 WL 1658371, at *7 (Iowa Ct. App. 2022) (Vaitheswaran, P.J., dissenting) (citing State v. Werner, 919 N.W.2d 375, 376 (Iowa

2018)). The deputy's observations of Torres occurred after the warrantless entry into the home and the other officers had only suspicions. Id.

8. The Iowa Supreme Court should take this case because there is an important question of changing legal principles. Iowa R. App. P. 6.1103(1)(b)(3). These issues require clarification by the Iowa Supreme Court to both the bench and the bar. The dissent in this matter is lengthy and convincing, and dissents among the Iowa Court of Appeals are rare. See State v. Torres, 2022 WL 1658371, at *7 (Iowa Ct. App. 2022) (Vaitheswaran, P.J., dissenting). Parties will talk past each other and the Iowa Court of Appeals will continue to disagree without further explanation from the Iowa Supreme Court. Because of this need for guidance, it is an issue of broad public importance that the Iowa Supreme Court should ultimately determine. Iowa R. App. P. 6.1103(1)(b)(4).

WHEREFORE, Appellant respectfully requests this Court grant further review, vacate the decision of the Court of Appeals and grant the requested relief in the conclusion of this application.

STATEMENT OF THE CASE

Carlisle Police Officer Buehrer responded to a call for child endangerment due to reports of a small child who was hanging out of a second story window. (Tr. 45:5-9). Officer Buehrer met Leonor Flores, Mr. Torres's wife, who was the mother of their three children at the home. (Tr. 45:5-9). After an investigation, Officer

Buehrer arrested Leonor Flores and called in Deputy Konrad and the Department of Human Services. (Tr. 8:16-21; 17:1-7). Officers handcuffed Ms. Flores and detained her in a squad car. (Tr. 32:21-33:1) DHS worker Kate Roy responded and began her assessment. (Tr. 9:2-25). Deputy Konrad stayed outside of the residence. (Tr. 17:2-25). The reasons for the call had all but ended except for DHS finding a placement for the children. (Tr. 48:8-13). There had been no concern that the children would be unsafe with their grandmother, who was there at the time. (Tr. 49:11-13).

Mr. Torres then arrived to the scene in his vehicle. (Tr. 32:23-33:1). There was no evidence that Mr. Torres knew his children were supervised after seeing his wife arrested. (Tr. 34:9-14). Leaving his children alone could have constituted child endangerment, and there was a possibility that Mr. Torres's child could have been placed in shelter care. (Tr. 34:17-25). There were two officers, both in uniform, there when Mr. Torres arrived home, along with two marked patrol cars, and the street was blocked off. (Tr. 36:6-16). As soon as Mr. Torres arrived, police were directing him to where he could and could not go. (Tr. 37:11-14). They told him when he could and could not speak to his wife. (Tr. 37:15-17). On three different occasions, an officer placed his hand on Mr. Torres and said "Let's go." (Tr. 38:15-18). The officer demanded that Mr. Torres speak to him and look at him. (Tr. 39:4-7). The officer followed Mr. Torres from his lawn to the patrol car and then back to his lawn, never leaving his side. (Tr. 39:10-13).

Mr. Torres did not invite officers in, but they then followed him into his house. (Tr. 39:14-19). Officers were not making an arrest of Leonor at the time, because she was already in the squad car. (Tr. 39:20-23). Once in the house officers begin telling Mr. Torres who he can talk to and when. (Tr. 41:14-16). At one point Mr. Torres went upstairs and officers followed him upstairs. (Tr. 42:11-14). The officer said he needed to go with Mr. Torres. (Tr. 42:15-17). Then the officer followed Mr. Torres from room to room. (Tr. 42:18-20). Officers then followed Mr. Torres downstairs. (Tr. 42:21-23). Mr. Torres went back upstairs and officers followed him again. (Tr. 42:24-43:2). When Mr. Torres went to the bathroom, grabbed another officer, and waited outside the bathroom while Mr. Torres finished going to the bathroom. (Tr. 43:3-18). Both officers then followed him down to his kitchen. (Tr. 43:19-21). The officers pulled Mr. Torres aside and sked him if he had anything on him. (Tr. 43:22-25). He then patted Mr. Torres down for weapons. (Tr. 44:5-7). Overall, there was about ten minutes where the officers were with Mr. Torres in his home uninvited. (Tr. 44:11-15). At no point during this time did the officers give Mr. Torres Miranda warnings. (Tr. 44:1-4).

When asked if he noticed that Mr. Torres was under the influence of alcohol, Officer Beuhrer claimed he had "initial thoughts" but did not clarify what caused him to have this suspicion. (Tr. 47:11-14). At the time that the officer noticed that he was also directing Mr. Torres where to park his vehicle. (Tr. 49:21-50:8). Officer

Beuhrer did not investigate Mr. Torres for OWI, either at that time or ever. (Tr. 50:9-12).

Mr. Torres filed a Motion to Suppress all of the evidence obtained from the illegal seizure of his person, because the officers did not have reasonable articulable suspicion to seize him and question him before beginning their investigation for OWI, under both the United States and the Iowa Constitutions. (App. 7). He also filed a Motion to Suppress all statements he made to officers before being placed in handcuffs, because he was placed into custody and not given proper Miranda warnings, under both the United States and the Iowa Constitutions. (App. 7).

After hearing, the court ruled that the police officers' actions upon coming into contact with Mr. Torres was not an illegal seizure under the federal or Iowa Constitution. (App. 13). The court also ruled that the DHS and officer questioning did not amount to custodial interrogation under the Fifth Amendment. (App. 13).

The court ruled that the officers were engaged in bona fide community caretaking or exigent circumstances in entering Mr. Torres's home, continuing even after Ms. Flores was taken into custody and the children were home with their grandmother. (App. 16). The court also ruled that the officers had reasonable suspicion that Mr. Torres was under the influence of alcohol when he began his interaction with officers. (App. 17).

The court found that Ms. Roy's interviewing of Mr. Torres, asking if he was under the influence of alcohol, did not rise to the level of custodial interrogation, and was analogous to roadside questioning, as he was in his own home and came to the scene voluntarily. (App. 17).

Mr. Torres later waived his right to a jury trial and stipulated to a trial on the minutes of testimony. (06.08.2020 Transcript). The evidence admitted at this trial was that Ms. Roy could smell alcohol coming from Mr. Torres, and then the officer could see that Mr. Torres has bloodshot watery eyes, a heavy odor of alcohol from his person, and slurred speech. (Conf. App. 15). Mr. Torres refused to consent to sobriety tests and advised he was going to refuse all tests. (Conf. App. 15). Mr. Torres admitted he had two beers from drinking at the restaurant before he went to the house. (Conf. App. 15). He later also refused the DataMaster Test. (Conf. App. 15).

The court found him guilty of Operating While Intoxicated, Second Offense in violation of Iowa Code § 321J.2(2)(b). (App. 20). Mr. Torres timely filed a Notice of Appeal. (App. 27).

I. THE OFFICER'S SEIZURE OF MR. TORRES AS HE RETURNED TO HIS HOME WAS UNREASONABLE

A. Mr. Torres was seized shortly after he arrived at the scene

"A stop and subsequent detention--even though temporary and for a limited purpose--is a 'seizure' within the Fourth Amendment." State v. Kreps, 650 N.W.2d 636, 641 (Iowa 2002). The United States Constitution's Fourth Amendment and the State of Iowa's Constitution both require searches and seizures, including brief detentions, be founded on an objective justification in order to prevent prohibited pre-textual detentions. See United States v. Mendenhall, 456 U.S. 544, 551 (1980); United States Const., Amend. IV, Iowa Const., Art. I, Section 8. The Fourth Amendment guarantee against unreasonable searches and seizures is made applicable to the states under the Fourteenth Amendment to the United States Constitution. Mapp v. Ohio, 367 U.S. 643, 655 (1961). Warrantless searches and seizures are *per se* unreasonable unless they fall within one of the carefully drawn exceptions to the warrant requirement. State v. Lovig, 675 N.W.2d 557, 563 (Iowa 2004).

A seizure occurs if "there is a governmental termination of freedom of movement through means intentionally applied." Brower v. Inyo County, 489 U.S. 593, 597 (1989). In California v. Hodari D., 499 U.S. 621, 629 (1991), the Court held that "[a]n arrest requires either physical force . . . or, where that is absent,

submission to the assertion of authority." "A stop and subsequent detention--even though temporary and for a limited purpose--is a 'seizure' within the Fourth Amendment." State v. Kreps, 650 N.W.2d 636 (Iowa 2002). A person is considered seized for Fourth Amendment purposes if a reasonable person would believe he or she is not free to leave. United States v. Mendenhall, 446 U.S. 544, 554 (1980). Whether a Fourth Amendment violation has occurred, however, turns on an objective assessment of the officer's actions in the light of the facts and circumstances encountered by the officer. Maryland v. Macon, 472 U.S. 463, 470-41 (1985). Applying the aforementioned law to the facts existing in the present case, there was a seizure for Fourth Amendment purposes.

The Terry standard applies if the police want to detain Mr. Torres. "Terry established the legitimacy of an investigatory stop in situations where the police may lack probable cause for an arrest." Id. at 786 (citing Terry v. Ohio, 392 U.S. 1, 24 (1968)). The United States Supreme Court first approved of what is colloquially known as Terry stops on a basis of "the narrow authority of police officers who suspect criminal activity to make limited intrusions on an individual's personal security based on less than probable cause." United States v. Place, 462 U.S. 696, 702 (1983). The court approved that a seizure of a person without a warrant was reasonable so long as it was a limited search for weapons or "frisk", and "the

officer has reasonable, articulable suspicion that the person has been, is, or is about to be engaged in criminal activity." Id.

However, "reasonable suspicion of criminal activity generally justifies only a narrow deviation from the Fourth Amendment's requirement for a warrant. Id. If a seizure is justified by reasonable suspicion, it must be minimally intrusive and carefully tailored to its underlying justification. Id.

The State has the burden to show that the officer had reasonable, articulable, and specific belief of criminal activity. State v. Kinkead, 570 N.W.2d 97, 100 (Iowa 1997). If the State does not carry their burden, the court suppresses the evidence obtained through the seizure. Id. An officer has reasonable suspicion sufficient to make a stop without a warrant if the police officer can point to "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." Terry v. Ohio, 392 U.S. 1, 21 (1968). Circumstances merely giving rise to suspicion or curiosity will not suffice. In re S.A.W., 499 N.W.2d 739, 741 (Iowa Ct. App. 1993). Most importantly, and perhaps most relevant to the facts of the instant case, an inchoate or *generalized suspicion* will not serve to uphold a warrantless investigatory stop of a vehicle. Alabama v. White, 496 U.S. 325, 329 (1990).

A reasonable person in Mr. Torres's position would have believed they were not free to leave long before the DHS worker noticed he was intoxicated. A seizure

occurs if "there is a governmental termination of freedom of movement through means intentionally applied." Brower v. Inyo County, 489 U.S. 593, 597 (1989). A person is considered seized for Fourth Amendment purposes if a reasonable person would believe he or she is not free to leave. United States v. Mendenhall, 446 U.S. 544, 554 (1980).

Officers seized Mr. Torres as soon as he arrived, when officers were directing him to where he could and could not go. (Tr. 37:11-14). On three different occasions, an officer placed his hand on Mr. Torres and said "Let's go." (Tr. 38:15-18). An officer did not ask, but in fact demanded that Mr. Torres speak to him and look at him. (Tr. 39:4-7). The officer followed Mr. Torres from his lawn to the patrol car and then back to his lawn, never leaving his side. (Tr. 39:10-13). A reasonable person would not believe

It was not even possible for Mr. Torres to escape from an unwanted interaction with law enforcement by retreating into the safety and security of his home. Mr. Torres did not invite officers in, but they then followed him into his house. (Tr. 39:14-19). Even after Mr. Torres retreated into his home, officers began telling Mr. Torres who he can talk to and when. (Tr. 41:14-16). When Mr. Torres tries to find some privacy and use the bathroom at his house, officers followed him upstairs and wanted for him to finish using the bathroom. (Tr. 43:3-18). They even subjected him to a traditional weapons patdown as part of a Terry stop. (Tr. 44:5-7).

As Judge Vaitheswaran argued in dissent:

When Torres arrived, the mother was secured in a police vehicle and the children's grandmother was attending to them inside the home. Torres came in his truck fifteen minutes after the child protective worker. Although the Carlisle officer testified that he and the deputy sheriff "had initial thoughts when [Torres] first got there" that he might be under the influence, the officer apparently paid no heed to those thoughts and instructed Torres to drive his vehicle to another designated location. See United States v. Beauchamp, 659 F.3d 560, 567–68 (6th Cir. 2011) (holding the defendant "was seized when, in compliance with [the officer's] instructions, he stopped, turned around, faced the uniformed officer and the marked patrol car, and began to walk toward the officer" and stating, "[j]ust as '[s]topping after being ordered to stop triggers the Fourth Amendment,' so too does changing course and complying with an officer's requests" (quoting United States v. Johnson, 620 F.3d 685, 691 (6th Cir. 2010))).

Torres parked the vehicle where he was told and returned on foot. The officer followed him as he went toward the patrol car and told him when he could talk to his wife. See Wilson v. Jara, 866 F. Supp. 2d 1270, 1296 (D.N.M. 2011), aff'd, 512 F. App'x 841 (10th Cir. 2013) (finding a seizure occurred when officers ordered a mother who answered her door to "go get your son" even though the mother "was not a suspect," and stating, "[o]fficers seize a person when an officer attempts to assert his or her official authority over a citizen, and the citizen does not feel that he or she is at liberty to disregard that authority"). The Carlisle officer followed Torres into the house. Cf. State v. Breuer, 577 N.W.2d 41, 48 (Iowa 1998) (stating a deputy "did not unreasonably invade [the defendant's] legitimate expectation of privacy by opening the unlocked outer door of the apartment building and proceeding up the stairway to [the defendant's] apartment door without a warrant"). Shortly thereafter, the officer summoned the deputy to come inside. Both officers followed Torres to the bathroom and waited outside the door until he exited. See United States v. Villa-Gonzalez, 623 F.3d 526, 532–34 (8th Cir. 2010) (concluding defendant was seized by officers when neither occupant of the home gave the officers consent to enter; "[t]hree officers were present in the trailer" and "[t]he officers ... positioned themselves so as limit [the occupants']

> freedom of movement"). The deputy later questioned Torres about his sobriety and instructed him to go outside for a sobriety check.

State v. Torres, 2022 WL 1658371, at *6 (Iowa Ct. App. 2022) (Vaitheswaran, P.J., dissenting).

B. Officers did not have reasonable articulable suspicion for the seizure

When asked if he noticed that Mr. Torres was under the influence of alcohol, Officer Beuhrer claimed he had "initial thoughts" but did not clarify what caused him to have this suspicion. (Tr. 47:11-14). At the time that the officer noticed that he was also directing Mr. Torres where to park his vehicle. (Tr. 49:21-50:8). Officer Beuhrer did not investigate Mr. Torres for OWI, either at that time or ever. (Tr. 50:9-12).

Rather, when agents of the State first noticed that Mr. Torres was intoxicated was when Ms. Roy was talking to him. (Tr. 11:10-24). After Ms. Roy was done talking to him, that was when Deputy Konrad went to speak to him. (Tr. 19:9-14). At that point, Deputy Konrad noticed that his eyes were bloodshot, his speech was slurred, and that he could smell alcohol on his breath. (Tr. 19:9-14).

An officer has reasonable suspicion sufficient to make a stop without a warrant if the police officer can point to "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." Terry v. Ohio, 392 U.S. 1, 21 (1968)); see also In re S.A.W., 499 N.W.2d 739, 741

(Iowa Ct. App. 1993). Circumstances merely giving rise to suspicion or curiosity will not suffice. In re S.A.W., 499 at 741. Most importantly, and perhaps most relevant to the facts of the instant case, an inchoate or *generalized suspicion* will not serve to uphold a warrantless investigatory stop of a vehicle. Alabama v. White, 496 U.S. 325, 329 (1990).

> [T]he Carlisle officer testified the officers "had initial thoughts" that Torres appeared to be under the influence of alcohol "when he first got there." Yet, neither he nor the deputy investigated their suspicions at that juncture. Indeed, the deputy acknowledged that, when Torres arrived at his home, he was "not investigating him for any offense." And, notwithstanding the officer's suspicion of intoxication, Torres was instructed to drive his vehicle to another location.

State v. Torres, 2022 WL 1658371, at *7 (Iowa Ct. App. 2022) (Vaitheswaran, P.J., dissenting).

C. Community caretaking, exigent circumstances, and other exceptions did not apply

While not argued by the State or testified to by officers, the court found that officers were engaged in community caretaking by seizing Mr. Torres and in entering Mr. Torres's home, continuing even after Ms. Flores was taken into custody and the children were home with their grandmother. (App. 16). As part of their community caretaking functions officers may act reasonably to give aid to a person in distress and finding what caused the distress. State v. Mitchell, 498 N.W.2d 691, 693 (Iowa 1993). When an officer is giving emergency aid, "the officer has an

immediate, reasonable belief that a serious, dangerous event is occurring." State v. Coffman, 914 N.W.2d 240, 245 (Iowa 2018). The State has the burden of showing specific and articulable facts that show the officer's actions were proper. State v. Kurth, 813 N.W.2d 270, 277 (Iowa 2012). Officer actions under the community caretaking exception must be limited to the justification, and "the officer may not do more than is reasonably necessary to determine whether a person is in need of assistance, and to provide that assistance." Id.

When an officer is acting as a public servant, the officer believes that there is an issue requiring the officer's general assistance. Id. The application of the exception asks whether there was a seizure, whether it was bona fide community caretaker activity, and if the public need and interest outweighs the intrusion upon the privacy of the citizen. Id.

Any community caretaking function had ended by the time that Mr. Torres arrived. There was no child hanging out of a window. There was no concern that the children would be unsafe with their grandmother, who was there at the time. (Tr. 49:11-13). In fact there was no concern that the children would be unsafe with their father, who had just arrived. Mr. Torres did not even arrive to the scene before the perpetrator behind any child endangerment had already been arrested and placed into the back of a squad car. (Tr. 32:23-33:1; 34:9-14). Officers did not need to instruct

Mr. Torre on everything he could and could not do, follow him into his home, follow him while used the restroom, and otherwise detain him.

Judge Vaitheswaran pointed out the reasons why community caretaking would never be acceptable, including the fact that it cannot apply to warrantless entry into the home, in her dissent:

> [U]nder Caniglia, "the community caretaking doctrine does not apply to warrantless entries into a home." 141 S. Ct. at 1599–1600. But, even if it did, there is scant, if any, evidence that the exception was applicable. The exception "turns on whether the facts available to the officer at the moment of the seizure would have warranted a reasonable person to believe an emergency existed." State v. Crawford, 659 N.W.2d 537, 543 (Iowa 2003). As discussed, a reasonable person would not have believed an emergency existed at the time of Torres' seizure. See Caniglia, 141 S. Ct. at 1603-04 (Kavanaugh, J., concurring) (recognizing the exigency generated by "need to assist persons who are seriously injured or threatened with such injury" and citing a non-exhaustive list of exigencies, such as contemplated suicide, an elderly man who is "uncharacteristically absent," and "*unattended* young children inside a home" (emphasis added)). I would conclude the exception was inapplicable.

State v. Torres, 2022 WL 1658371, at *8 (Iowa Ct. App. 2022) (Vaitheswaran, P.J., dissenting).

There was nothing about the child endangerment investigation or the "crime scene" the justified Mr. Torres's seizure.

> As for the child-endangerment investigation, the mother had been arrested and secured in the patrol car by the time Torres arrived. Cf. State v. Salcedo, 935 N.W.2d 572, 577 (Iowa 2019) (stating the deputy "failed to obtain individualized suspicion of other criminal activity before unreasonably prolonging the stop. The unreasonableness of the stop was in violation of [the defendant's]

> Fourth Amendment rights"); State v. Coleman, 890 N.W.2d 284, 290 (Iowa 2017) (observing "the lawfulness of the seizure c[a]me to an end" when the "reasonable suspicion for the stop had been completely dispelled"). Although the deputy cited the need to go inside the house to assist with the children, their grandmother was in the home for the express purpose of supervising them. Notably, the Carlisle officer testified he had no concern at that time that the children were unsafe. There also was no evidence that the deputy fulfilled his stated purpose of supervising the children. In sum, the deputy's entry into the home had nothing to do with the children and everything to do with Torres.
>
> It is worth reiterating that no facts tied Torres to the circumstances triggering the mother's arrest for child endangerment. The Carlisle officer reported that he spoke to Torres about those circumstances and Torres "admitted [the mother] had been having a tough time lately." The officer did not suggest Torres was to blame or mention any exigency relating to the mother's arrest for child endangerment.

State v. Torres, 2022 WL 1658371, at *8 (Iowa Ct. App. 2022) (Vaitheswaran, P.J., dissenting).

Likewise, there were no exigent circumstances. Exigent circumstances usually require danger of violence to officers or others, risk of escape, or the destruction of evidence. State v. Watts, 801 N.W.2d 845, 851 (Iowa 2011). The circumstances must be supported by specific articulable grounds. Id. By the time that Mr. Torres came to the home, police had already secured the area and there was no indication that Mr. Torres was a threat to officers or a threat in his own home.

> Turning to Torres' "visible agitation" at the prospect of the children's removal, I am hard pressed to discern how his understandable distress created an exigency requiring a warrantless, nonconsensual intrusion into his home. See Wilson, 968 N.W.2d at 914 (noting "the exigent-circumstances exception was designed for

> situations presenting 'a compelling need for official action and no time to secure a warrant' " (quoting Lange, 141 S. Ct. at 2017)). And most, if not all, the agitation occurred after the deputy expressed an intent to arrest him.
>
> In any event, exigent circumstances for a warrantless entry must be coupled with probable cause for the entry. See State v. Lewis, 675 N.W.2d 516, 525 (Iowa 2004) (noting that officers needed probable cause and exigent circumstances to enter the curtilage of a home without a warrant and reasonable suspicion did not suffice). The child protective worker's observations could not furnish that probable cause and be imputed to the officers because she was not a peace officer. See State v. Werner, 919 N.W.2d 375, 376 (Iowa 2018) (concluding certain department of transportation officers "lacked authority ... to engage in general traffic enforcement under Iowa Code chapter 321" (citing Rilea v. Iowa Dep't of Transp., 919 N.W.2d 380, 389 (Iowa 2018)); State v. Palmer, 554 N.W.2d 859, 866, 867 (Iowa 1996) (concluding a person "was not a qualified peace officer for purposes of the implied consent statute" and declining to apply imputed knowledge doctrine to a person not qualified as a peace officer). As for the deputy's observations of Torres inside the home, those observations occurred after the warrantless entry into the home. Finally, the officers' suspicions of intoxication on Torres' arrival at the home were just that—suspicions. They did not amount to probable cause. See Lewis, 675 N.W.2d at 525 ("Reasonable and articulable suspicion did not give the officers the authority to enter [the defendant's] fenced yard."). I would conclude the officers' warrantless entry into Torres' home was not supported by the probable-cause/exigent-circumstances exception to the warrant requirement.
>
> State v. Torres, 2022 WL 1658371, at *8 (Iowa Ct. App. 2022)

(Vaitheswaran, P.J., dissenting).

CONCLUSION

The Iowa Court of Appeals has been split on an issue that the Iowa Supreme Court's precedents should solve. The court should suppress the officers'

observations of Torres and any admissions he made to consuming alcohol, then reverse the suppression ruling and judgment of conviction for new trial where the evidence is excluded.

ORAL ARGUMENT NOTICE

Counsel requests oral argument.

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