

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

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**STATE OF IOWA,  
Plaintiff-Appellee**

**vs.**

**SANTOS RENE TORRES,  
Defendant-Appellant.**

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

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**DEFENDANT/APPELLANT'S FINAL REPLY BRIEF**

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Benjamin Bergmann  
PARRISH KRUIDENIER DUNN GENTRY  
BROWN BERGMANN & MESSAMER, L.L.P.  
2910 Grand Avenue  
Des Moines, Iowa 50312  
Telephone: (515) 284-5737  
Facsimile: (515) 284-1704  
Email: [bbergmann@parrishlaw.com](mailto:bbergmann@parrishlaw.com)  
ATTORNEY FOR DEFENDANT/APPELLANT

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## ARGUMENT

### **I. THE DISTRICT COURT SHOULD HAVE GRANTED MR. TORRES' MOTION TO SUPPRESS ON THE GROUNDS OF ILLEGAL SEIZURE**

#### **A. Evidence of Mr. Torres Intoxication Must be Suppressed, as Mr. Torres was Illegally Seized**

Mr. Torres was subjected to illegal seizure, and all evidence obtained as a result of that seizure should have been suppressed by the district court. The State claims Mr. Torres has not identified any evidence that should be suppressed as a result of the illegal seizure in this case. The logic following Mr. Torres' argument is not difficult to discern. If the officers in this case had not illegally seized Mr. Torres, they would not have had any evidence of his alleged intoxication. The evidence stemming from that illegal seizure then, including observations of law enforcement that were made possible *only through the illegal seizure*, should have been suppressed by the district court.

Throughout the entire time Mr. Torres was in his home, his movements were restricted. If he had not been illegally seized, he could have simply avoided interaction with the law enforcement officers in the home, making their observations of his supposed intoxication impossible. The State attempted to contort Mr. Torres' argument by asserting that it was only Officer Beuhrer who seized Mr. Torres, so only his observations of Mr. Torres would be subject to suppression. (State's Brief at 15). Mr. Torres is unaware of any case supporting the proposition that only

evidence obtained from the officer directly responsible for violating a citizen's rights is subject to suppression. The State does not cite any caselaw to support its contention, likely because such a case does not exist.

Deputy Konrad's observations of Mr. Torres were made possible *because of* Officer Beuhrer's illegal seizure. In State v. Campbell, the Iowa Court of Appeals examined whether extension of a traffic stop constituted an illegal seizure. See State v. Campbell, 898 N.W.2d 204 (Table) 2017 WL 706208 (Iowa Ct. App. 2017). In that case, one officer prolonged a traffic stop so that a second officer could come and have their K-9 do a drug sniff of the car. Id. at \*2. The Court made no differentiation between evidence obtained by one officer versus evidence obtained by the other. See generally Id. The evidence of criminal activity was found by the second officer only because of the illegal seizure of the first officer. Id. at \*1-2.

Here, just as in Campbell, illegal seizure by one officer allowed another officer to obtain incriminating evidence. The Court should not draw any distinction between the observations of Officer Beuhrer and those of Deputy Konrad. If the State's logic ruled the day, officers would be allowed to violate the citizenry's rights without restraint so long as they had another officer waiting in the wings to obtain evidence. All of Deputy Konrad's observations, *including* his observations outside of Mr. Torres' home, were made possible by the illegal seizure conducted by his fellow law enforcement officer. The same is true for the observations of DHS worker

Kate Roy. Without Officer Beuhrer's seizure and restriction of Mr. Torres' movements, Roy's observations would not have been possible.

The State contends that Deputy Konrad's observations of Mr. Torres outside of Mr. Torres' home are not suppressible, "because at this time, Deputy Konrad had reasonable suspicion to conduct an OWI investigation." (State's Brief at 17-18). The State neglects to mention, however, where that purported reasonable suspicion came from. Again, all of Deputy Konrad's observations were made possible by illegal seizure of Mr. Torres. Absent the illegal seizure, Deputy Konrad would have had no reason to require Mr. Torres to come outside the home.

The State takes care to repeatedly mention that the officers were allowed to be in the house. (State's Brief at 15-16). Even if this were true, the State cannot explain why following Mr. Torres' movements in the house, controlling who he could and could not talk to, and even following him to the bathroom was necessary. The State does not even attempt to explain why it was necessary in its brief. Both the State and the district court failed to meaningfully explain *both* the valid reasons for officers being in the home *and* valid reasons for officers to restrict Mr. Torres' movements in the way that they did.

The district court found, and the State relies on the district court's finding that, "it was incumbent upon the officers to remain near the defendant; the defendant was suspected of being intoxicated, responded to a child endangerment investigation, and

most importantly, was visibly agitated at the prospect of his children being removed. In fact, the officers would have been derelict in their duty to leave the defendant unattended in this situation.” 10-11-2019 Ruling at 5; App. 17. (State’s Brief at 18-19). This argument puts the cart before the horse. Without the illegal seizure, Mr. Torres would not have been suspected of intoxication. The State cannot rely on Mr. Torres’ purported intoxication in justifying the seizure, because Mr. Torres’ entire argument is, and the facts produced at the suppression hearing showed, that the illegal seizure *lead to* the officers finding evidence of his intoxication. In order for the seizure to stand, the State needs to produce evidence supporting reasonable suspicion *before* the illegal seizure. See 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) (cases standing for the proposition that there must be specific and articulable facts that reasonably warrant the intrusion).

The State’s second argument justifying the seizure, that the officers were responding to a child endangerment investigation, also fails. Throughout the State’s brief, it fails to acknowledge the fact that by the time Mr. Torres returned to his home, his wife had already been placed under arrest and was being held in the officers’ squad car. There was no evidence to be derived regarding the child endangerment investigation from following Mr. Torres around the house. Mr. Torres

was not home when the alleged child endangerment occurred, and by the time he arrived home his wife had already been arrested.

In any event, neither the community caretaking nor exigent circumstances exceptions apply to the seizure of Mr. Torres. 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). By the time Mr. Torres arrived home, the children were no longer in distress. Their grandmother was home and more than capable of taking care of them. Seizing Mr. Torres in no way allowed the officers to give aid to a person in distress, nor did it allow officers to find out what caused the distress, because Mr. Torres was not home when the purported child endangerment occurred.

The exigent circumstances exception was similarly inapplicable to Mr. Torres' situation. 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. The officers had no evidence supporting any inference that Mr. Torres was a danger to others. He had no evidence regarding the crime of child endangerment, because he was not there when it occurred. Seizure of Mr. Torres was entirely unnecessary for purposes of furthering the officers' child endangerment investigation.



The seizure in this case was not supported by reasonable suspicion, probable cause, nor any exception to the warrant requirement. The State has offered no evidence supporting a reasonable suspicion of intoxication *prior to* the seizure of Mr. Torres. All evidence stemming from the illegal seizure must be suppressed. Evidence stemming from the seizure includes all evidence made possible by the illegal seizure. Therefore, observations of Officer Beuhrer, Roy, and Deputy Konrad, should have all been suppressed by the district court.

**B. The Appropriate Remedy in this Case is Reversal and Remand for New Trial.**

The State claims that the appropriate remedy for the district court's error in denying Mr. Torres' motion to suppress is a conditional remand. (State's Brief at 19). To begin, the State's argument is conditioned entirely on the district court's reliance on the community caretaking exception. Mr. Torres contends that there is *no exception* that applies to the illegal seizure in this case. The appropriate remedy therefore is to reverse his conviction and remand for a new trial. In any event, the case the State uses to argue for a conditional remand has to do with warrantless *entries* into a home. See Caniglia v. Strom, \_\_\_ U.S. \_\_\_, 141 S. Ct. 1596, 1599–1600 (2021). (State's Brief at 19). In this case, Mr. Torres contends he was subjected to illegal seizure, so the analysis in Caniglia is not relevant to this case. The appropriate remedy if this Court finds the district court erred in denying Mr. Torres'

motion to suppress is reversal of his conviction and remand to the district court for a new trial.

**II. MR. TORRES WAS SUBJECTED TO CUSTODIAL INTERROGATION WITHOUT THE BENEFIT OF *MIRANDA*, SO HIS STATEMENTS SHOULD HAVE BEEN SUPPRESSED**

Officers interrogated Mr. Torres while he was in custody without informing him of his Miranda rights. The State claims the Miranda violations in this case are not severe because “[t]he *only* incriminating statement Defendant made was his admission to Deputy Konrad that he drank two beers at a restaurant before he drove home.” (State’s Brief at 21) (emphasis added). The importance of Mr. Torres’ statement is vastly underexaggerated by the State.

The only evidence the State had of Mr. Torres’ supposed intoxication were the observations of Officer Beuhrer, Roy, and Deputy Konrad, and the exact statement that the State downplays. Mr. Torres did not consent to any field sobriety tests. He did not consent to chemical testing. The evidence supporting Mr. Torres’ intoxication was minimal. One statement by Mr. Torres, wherein he admitted he had consumed alcohol before driving home, was essential to the State’s case.

The State claims Mr. Torres was not in custody when he made this incriminating statement to Deputy Konrad. (State’s Brief at 23). All of the factors the Court considers in determining whether an individual is in custody for purposes of *Miranda* support a finding of custody in this case. The appropriate test for custody

is whether a reasonable person in the defendant's position would understand himself to be in custody. State v. Deases, 518 N.W.2d 784, 789 (Iowa 1994). To determine what the reasonable person would understand, the court should look to (1) the language used to summon the individual; (2) the purpose, place, and manner of interrogation; (3) the extent to which the defendant is confronted with evidence of her guilt; and (4) whether the defendant is free to leave the place of questioning. Id.

The Court must look at the entirety of the situation in order to determine whether Mr. Torres was in custody. The State cites cases where an individual is pulled over while driving and an OWI investigation is conducted to support its contention that Mr. Torres was not in custody. (State's Brief at 23). See also State v. Scott, 518 N.W.2d 347, 350 (Iowa 1994); accord Berkemer v. McCarty, 468 U.S. 420, 436, 440 (1984). This case, however, is not akin to a typical OWI investigation.

In most OWI investigations, the driver of the vehicle is not seized by law enforcement for a lengthy period before the OWI investigation begins. In most cases, an officer pulls a driver over, obtains reasonable suspicion of intoxication, and then the OWI investigation begins. In this case, Mr. Torres arrived at his home, was seized by law enforcement, was told where he could go, who he could talk to, and even followed to the bathroom in his own home. If ever there was a case where custody existed during an OWI investigation, this would be it.

The language used to summon Mr. Torres supports a finding of custody. The purpose, place, and manner of interrogation supports a finding of custody. The extent to which Mr. Torres was confronted with evidence of his guilt supports a finding of custody. Finally, the final factor, whether Mr. Torres was free to leave, supports a finding of custody. Mr. Torres was clearly subject to custodial interrogation in this case. Officers violated his rights when he was subjected to custodial interrogation without the benefit of being told his Miranda warnings.

The State argues that even if Mr. Torres' rights were violated, any error the district court committed by failing to suppress his statements was harmless. (State's Brief at 24). As noted above, the State seriously underexaggerates the importance of Mr. Torres' statement acknowledging that he had consumed alcohol before driving. Mr. Torres did not consent to any testing to support the officers' contention that he was intoxicated.

When an individual is accused of operating while intoxicated, and they did not consent to chemical testing, the fact finder is left to examining their conduct and statements in order to determine whether they were under the influence of alcohol. In a case such as this, where there were reasonable explanations for all of Mr. Torres' behavior that the State used to try and prove he was intoxicated, an admission of alcohol consumption goes a long way to proving guilt. Admission of Mr. Torres' statements was not harmless. The district court erred in denying Mr. Torres' motion

to suppress his illegally obtained statements. The Court should reverse Mr. Torres' conviction and remand the case for a new trial.

### **III. THERE WAS NOT SUFFICIENT EVIDENCE TO CONVICT MR. TORRES**

Even with all the illegally obtained evidence admitted at trial, there was not sufficient evidence to support Mr. Torres' conviction. Mr. Torres did not consent to field sobriety tests or chemical testing. The State was required to prove his intoxication by his conduct alone. The State had to prove he was under the influence of alcohol through officers' observations of Mr. Torres' behavior and statements Mr. Torres made. A person is "under the influence" when at least one of the following is true because of alcohol consumption: 1) the person's reasoning or mental ability is affected; 2) the person's judgment is impaired; 3) the person's emotions are visibly excited; or 4) the person, to any extent, loses control of bodily actions or motions. State v. Dominguez, 482 N.W.2d 390, 392 (Iowa 1992).

The State claims Officer Beuhrer immediately suspected Mr. Torres had been drinking when Mr. Torres arrived at the home. (State's Brief at 28). It is not credible to believe that Officer Beuhrer saw Mr. Torres, thought he was intoxicated, then directed him to park his vehicle. (Tr. 49:21-50:8). It is not credible that Officer Beuhrer saw Mr. Torres, thought he was intoxicated, then did not immediately begin investigating him for OWI. Officer Beuhrer's alleged observations were not credible,

and were not sufficient to prove Mr. Torres guilty of OWI beyond a reasonable doubt.

Next, the State relies on Deputy Konrad's observations of Mr. Torres, and the statement Mr. Torres made to Deputy Konrad regarding his consumption of alcohol. All Mr. Torres's statement supports is that he had been drinking, not that he was intoxicated. Deputy Konrad's observations that Mr. Torres was agitated were clearly reasonable given that his wife had just been arrested for child endangerment. Mr. Torres's emotional agitation is just as easily explained by the innocent explanation that he was justifiably emotionally upset as it is by intoxication, and thus the evidence was not sufficient to convict him of OWI.

### **CONCLUSION**

The district court erred in finding that Mr. Torres was guilty of Operating While Intoxicated. The innocent explanation for Mr. Torres' behavior is just as likely as the inculpatory explanation, so the State's evidence was not sufficient to establish that he was intoxicated. The court should reverse his conviction and remand for dismissal.

If the Court finds there was sufficient evidence at trial, the Court should nevertheless find the district court erred by denying Mr. Torres's Motion to Suppress. There was not reasonable suspicion to support the officer's detention of Mr. Torres, and the community caretaking and exigent circumstances exception did

not apply. In addition, Mr. Torres was placed into custodial interrogation without a Miranda warning, and his statements should be suppressed. This Court should overturn the district court's ruling on Mr. Torres' Motion to Suppress, and remand the case to the district court for a new trial.

**PARRISH KRUIDENIER DUNN GENTRY  
BROWN BERGMANN & MESSAMER, L.L.P.**

By: /s/ Benjamin D. Bergmann

Benjamin D. Bergmann AT0009469

2910 Grand Avenue

Des Moines, Iowa 50312

Telephone: (515) 284-5737

Facsimile: (515) 284-1704

Email: [bbergmann@parrishlaw.com](mailto:bbergmann@parrishlaw.com)

ATTORNEY FOR DEFENDANT-APPELLANT

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This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) (no more than 7,000 words) because this brief contains 2,742 words, excluding the parts of the brief exempted by Rule 6.903(1)(g)(1), which are the table of contents, table of authorities, statement of the issues, and certificates.

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 Microsoft Office Word 2010 in font size 14, Times New Roman.

*/s/ Alexander Smith*  
Dated: September 27, 2021  
Alexander Smith