IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. DONALD MELVIN WITTENBERG, Defendant-Appellant.	SUPREME COURT NO. 22-0037

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HONORABLE BECKY GOETTSCH, ASSOCIATE JUDGE

APPELLANT'S BRIEF AND ARGUMENT AND REQUEST FOR ORAL ARGUMENT

MARTHA J. LUCEY
State Appellate Defender

JOSH IRWIN
Assistant Appellate Defender
jirwin@spd.state.ia.us
appellatedefender@spd.state.ia.us

STATE APPELLATE DEFENDER'S OFFICE
Fourth Floor Lucas Building
Des Moines, Iowa 50319
(515) 281-8841 / (515) 281-7281 FAX

ATTORNEYS FOR DEFENDANT-APPELLANT

FINAL

CERTIFICATE OF SERVICE

On the 9th day of December, 2022, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Donald Wittenberg, 2013 W. 1st St., #4, Ankeny, IA 50023.

APPELLATE DEFENDER'S OFFICE

Josh Irwin
Assistant Appellate Defender
Appellate Defender Office
Lucas Bldg., 4th Floor
321 E. 12th Street
Des Moines, IA 50319
(515) 281-8841
jirwin@spd.state.ia.us
appellatedefender@spd.state.ia.us

JI/ls/09/22
JI/ls/11/22

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitutional Provisions:

Statutes:

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Wittenberg was seized without reasonable suspicion or probable cause in violation of the Fourth Amendment to the United States Constitution and Article I, Section 8 of the Iowa Constitution.

Authorities

State v. Lovig, 675 N.W.2d 557, 562 (Iowa 2004)

State v. Pals, 805 N.W.2d 767, 771 (Iowa 2011)

State v. Breuer, 577 N.W.2d 41, 44 (Iowa 1998)

A. Police seized Wittenberg without probable cause or reasonable suspicion.

U.S. Const. Amend. IV

Iowa Const. Art. I, § 8

State v. Fogg, 936 N.W.2d 664, 668 (Iowa 2019)

State v. Wilkes, 756 N.W.2d 838, 842–43 (Iowa 2008)

Florida v. Bostick, 501 U.S. 429, 434 (1991)

Iowa Code § 321.358(2)

Iowa Code § 321.402

People v. Kasrawi, 280 Cal. Rptr. 3d 214, 219–22 (Cal. Ct. App. 2021)

Florida v. Royer, 460 U.S. 491, 498 (1983)

United States v. Mendenhall, 446 U.S. 544, 546 (1980)

State v. Coleman, 890 N.W.2d 284, 299 (Iowa 2017)

B. The community caretaking exception is inapplicable to the facts of this case.

State v. Coffman, 914 N.W.2d 240, 244 (Iowa 2018)

State v. Tyler, 867 N.W.2d 136, 170 (Iowa 2015)

State v. Crawford, 659 N.W.2d 537, 543 (Iowa 2003)

State v. Kern, 831 N.W.2d 149, 173 (Iowa 2013)

State v. Kurth, 813 N.W.2d 270, 277–78 (Iowa 2012)

ROUTING STATEMENT

This case should be transferred to the Court of Appeals because the issues raised involve the application of existing legal principles. Iowa R. App. P. 6.903(2)(d) and 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case

The Defendant-Appellant, Donald Melvin Wittenberg, appeals from his conviction, judgment, and sentence for the offense of operating a motor vehicle while intoxicated, third offense, a class D felony, in violation of Iowa Code § 321J.2 (2019).

Course of Proceedings

The State charged Wittenberg with operating a motor vehicle while intoxicated, third offense, by trial information filed April 15, 2021. (Trial Information) (App. pp. 4-5). Wittenberg's attorney filed a written arraignment, plea of not guilty, and demand of his 90-day speedy trial right on April 23, 2021. (Written Arraignment) (App. pp. 6-7). Wittenberg

subsequently waived his 90-day speedy trial right on June 9. (90-Day Waiver) (App. p. 8).

Wittenberg filed a motion to suppress on May 28, 2021, arguing he had been seized without probable cause or reasonable suspicion, had been subjected to custodial interrogation without a Miranda warning, and had been subjected to continued interrogation after invoking his right to counsel. (Motion to Suppress pp. 1–2) (App. pp. 9-10). The State filed a resistance to Wittenberg's motion to suppress on June 28, 2021, arguing that no seizure occurred, that if a seizure occurred it was justified by the "community caretaker exception to the warrant requirement," and that Wittenberg's statements were not prompted by interrogation. (Resistance to Motion to Suppress) (App. pp. 11-12). The matter was heard on June 29. On July 13, the district court entered an order concluding the initial encounter was not a seizure, that reasonable suspicion arose once the officer began speaking with Wittenberg, that Wittenberg's statements during

transport were not the product of interrogation, and that an officer asked two questions after Wittenberg unequivocally invoked his right to counsel, the responses to which were suppressed. (Order on Motion to Suppress pp. 1–2) (App. pp. 13-14).

The case proceeded to trial on October 11, 2021. (Trial Tr. p. 4 L. 2–3). Prior to jury selection, defense counsel indicated that, in the event Wittenberg was convicted of the underlying offense, he would stipulate to his prior operating while intoxicated convictions, and so a second phase of jury trial would be unnecessary. (Trial Tr. p. 10 L. 17–21). At the close of trial, the jury returned a guilty verdict. (Verdict) (App. p. 16).

On October 26, 2021, Wittenberg filed a stipulation, stating he understood his jury trial rights with regard to sentencing enhancement proceedings, understood the minimum and maximum punishments applicable without and

with enhancement, and admitted to two prior convictions for operating while intoxicated. (Stipulation) (App. pp. 17-18).

Sentencing took place on January 5, 2022. (Sentencing Tr. p. 3 L. 2–3). The court confirmed with Wittenberg that he understood the contents of his stipulation to prior offenses and still desired to so stipulate, that he was represented by an attorney at the time of those convictions, that he had reviewed his trial information with his attorney, and that he had no questions. (Sentencing Tr. p. 3 L. 21–p. 5 L. 7). The State argued the court should follow the sentencing recommendation of the presentence investigation report and impose a term of incarceration. (Sentencing Tr. p. 8 L. 19–22). Defense counsel argued Wittenberg should be sentenced to a five-year term of incarceration with all but 30 days suspended, with credit toward that sentence for the time Wittenberg spent in inpatient treatment. (Sentencing Tr. p. 10 L. 1–23). The court heard allocution from Wittenberg. (Sentencing Tr. p. 11 L. 3–21). The court acknowledged and

commended Wittenberg's work in substance abuse treatment and compliance with the terms of his pretrial release, but ultimately imposed a sentence of incarceration not to exceed five years with credit for time spent in inpatient treatment, and a fine of $3125 plus 15% surcharge. (Sentencing Tr. p. 12 L. 8–p. 14 L. 8). The court filed a written sentencing order the same day which mirrored its oral pronouncement of sentence. (Order of Disposition) (App. pp. 19-24).

Wittenberg filed a timely notice of appeal through counsel on January 5, 2022. (Notice of Appeal) (App. p. 25).

Facts

At around 2:00 a.m. on April 6, 2021, Altoona Police Officers Justin Shelburg and Tia Frederick were on patrol together when Shelburg saw a vehicle pull out of a parking spot outside a bar in Altoona. (Trial Tr. p. 83 L. 17–p. 84 L. 11). Shelburg followed the vehicle, and observed it stop at a stop sign then pull into a parking lot on the other side of the cross street. (Trial Tr. p. 84 L. 13–p. 85 L. 3). The vehicle

parked in a parking space, and Shelburg initially parked on the road some distance away, then pulled into the lot behind the vehicle on its driver's side, blocking one of the lot's two driveways. (Exhibit 2 Shelburg Dashcam[1] at 00:00–00:28). Shelburg shined his vehicle-mounted spotlight at the driver, Wittenberg. (Suppression Tr. p. 7 L. 17–19). When Shelburg approached and asked Wittenberg if he knew he was in a parking lot, Wittenberg responded that he did and he pulled in because Shelburg was following him. (Trial Tr. p. 86 L. 21–p. 87 L. 3). Shelburg testified Wittenberg's "eyes were very red and bloodshot, and he was slurring his speech as he was speaking to me and he was chewing gum." (Trial Tr. p. 87 L. 6–8). Wittenberg acknowledged he had been drinking. (Trial Tr. p. 87 L. 12–15). Shelburg ordered Wittenberg out of his

[1] The exhibits received by undersigned counsel include two different videos designated State's Exhibit 1, and the same is true of State's Exhibit 2. The exhibit versions contained in a folder labeled "State's 1 & 2" are edited; the exhibit versions contained in their own individual folders are unedited. References in this brief to Exhibits 1 and 2 are to the unedited versions used during the suppression hearing.

car in order to perform field sobriety tests; Wittenberg refused testing. (Trial Tr. p. 89 L. 4–10, p. 91 L. 18–20).

A second squad car driven by Altoona Police Officer Edwards arrived shortly after Shelburg's initial conversation with Wittenberg, but before he was removed from his car. Edwards entered through the entrance at the other end of the lot, and parked behind Wittenberg's vehicle in the only lane. (Exhibit A Edwards Dashcam at 00:08–00:28).

Shelburg transported Wittenberg to the police station for further investigation. (Trial Tr. p. 92 L. 2–5). Wittenberg refused to provide a breath sample for chemical testing. (Trial Tr. p. 96 L. 9–13).

Shelburg acknowledged he did not observe Wittenberg commit any traffic violations. (Trial Tr. p. 103 L. 21–p. 104 L. 7). Although Shelburg believed it was odd that Wittenberg pulled into the parking lot at that time of night, and characterized his driving as faster than Shelburg would expect in a parking lot, he acknowledged it was a legal place for

Wittenberg to park, and he had not been speeding or committed any other traffic violation. (Trial Tr. p. 112 L. 4–p. 113 L. 6).

ARGUMENT

Wittenberg was seized without reasonable suspicion or probable cause in violation of the Fourth Amendment to the United States Constitution and Article I, Section 8 of the Iowa Constitution.

Preservation of Error

Wittenberg filed a motion to suppress, the State responded, and the district court entered an order denying the motion in part. (Motion to Suppress; Resistance to Motion to Suppress; Order on Motion to Suppress) (App. pp. 9-15). Error was preserved. See State v. Lovig, 675 N.W.2d 557, 562 (Iowa 2004) (adverse ruling on motion to suppress preserves error).

Standard of Review

Appellate courts review constitutional claims de novo. State v. Pals, 805 N.W.2d 767, 771 (Iowa 2011). The Court will make an independent evaluation of the totality of the

circumstances as shown by the entire record, including evidence introduced during the suppression hearing and the trial. State v. Breuer, 577 N.W.2d 41, 44 (Iowa 1998).

Discussion

The district court concluded no seizure occurred when Shelburg followed Wittenberg, parked close to his car blocking the lot exit, shined a spotlight at him, and approached on foot with Fredericks while the two shined their flashlights at him. The court believed this was a consensual encounter because "[f]rom a review of the video, the defendant had the ability to reverse the car and leave the parking lot," "[t]he officer approached the vehicle on foot," and the officers' use of "flashlights" "was reasonable due to officer safety." (Order on Motion to Suppress p. 1) (App. p. 13). That conclusion was in error. Additionally, although the issue was not reached by the district court due to its conclusion that no seizure occurred, the State asserted any seizure was justified by the community caretaking exception to the warrant requirement.

(Resistance to Motion to Suppress p. 1 ¶ 4) (App. p. 11). That is incorrect.

A. Police seized Wittenberg without probable cause or reasonable suspicion.

Both the Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution protect against unreasonable seizures. U.S. Const. Amend. IV.; Iowa Const. Art. I, § 8. A seizure occurs if, under the totality of the circumstances, a reasonable person in the defendant's position would not "feel free 'to disregard the police and go about his business.'" State v. Fogg, 936 N.W.2d 664, 668 (Iowa 2019) (quoting State v. Wilkes, 756 N.W.2d 838, 842–43 (Iowa 2008) and citing Florida v. Bostick, 501 U.S. 429, 434 (1991)). Relevant factors include whether a suspect's ability to leave was "substantially impaired," and whether officers were "simply engaging in activity that any *private* person would have a right to engage in." Wilkes, 756 N.W.2d at 844; Fogg, 936 N.W.2d at 669 (citations omitted).

Shelburg acknowledged Wittenberg did not commit any traffic violations. (Suppression Tr. p. 19 L. 8–10). Despite lacking probable cause or reasonable suspicion, Shelburg followed Wittenberg into a parking lot, parked in the lot exit behind Wittenberg's vehicle on the driver's side, shined a spotlight[2] at him, and approached with Fredericks while both shined their flashlights at him. (Suppression Tr. p. 5 L. 14–p. 6 L. 20, p. 7 L. 17–19, p. 8 L. 4–5; Exhibit 1 Shelburg Dash Cam at 00:13–01:02; Exhibit 2 Shelburg Body Cam at 00:41–01:00). Shelburg's acts of parking in the lot exit and shining a spotlight at Wittenberg are not things an ordinary citizen has a right to do, and therefore constitute demonstrations of police

[2] The district court mentioned the use of "flashlights" in its order denying the motion to suppress, but did not mention the spotlight at all even though it was discussed extensively at the hearing. See (Suppression Tr. p. 7 L. 17–p. 8 L. 3, p. 25 L. 17–p. 27 L. 2, p. 28 L. 15–16, p. 36 L. 10–16, p. 37 L. 18–p. 38 L. 1; Order on Motion to Suppress p. 1) (App. p. 13). Additionally, the court's statement that the use of flashlights "was reasonable due to officer safety" has no bearing upon the question raised: whether a reasonable person in Wittenberg's position would have felt free to leave. Officer safety, while important, cannot justify an unconstitutional seizure.

authority. See Iowa Code §§ 321.358(2) (forbidding parking "in front of a public or private driveway"); 321.402 (regulating use of "spot lamps"). Shining a very bright and disorienting spotlight at Wittenberg from a short distance should carry particular weight when evaluating whether a reasonable person would have felt free to leave.[3] See People v. Kasrawi, 280 Cal. Rptr. 3d 214, 219–22 (Cal. Ct. App. 2021) (surveying California cases and classifying the use of a spotlight as "a show of authority" which is a factor in determining whether a seizure has occurred). It is also noteworthy that Shelburg initially stopped on the street a substantial distance from Wittenberg, but then drove much closer to him and parked in the lot exit; this would signal to a reasonable person that they were not free to leave. See (Exhibit 1 Shelburg Dash Cam at 00:00–00:28).

---

[3] Wittenberg does not argue that the use of a spotlight alone automatically turns a police encounter into a seizure. However, under the totality of the circumstances test, it is a weighty circumstance because it constitutes a demonstration of police authority and also impairs the target's vision, interfering with their ability to leave.

Additionally, Shelburg's use of a spotlight, parking in close proximity, and blocking the exit substantially impaired Wittenberg's ability to leave. Wittenberg was parked in a parking space with a curb in front of his vehicle blocking his route forward. (Exhibit 1 Shelburg Dashcam at 00:01). The exit was nearby on the driver's side of Wittenberg's vehicle, but Shelburg was parked in it. See (Exhibit A Edwards Dashcam at 00:21). While the precise distances are unknown, the videos show Shelburg's car parked perpendicular to and close behind Wittenberg's car on the driver's side.[4] See (Exhibit 1 Shelburg Dashcam at 00:27; Exhibit A Edwards Dashcam at 00:21). On the passenger side of Wittenberg's vehicle, approximately one parking space's distance away, is a curb which runs the length of the parking lot. (Exhibit A Edwards Dashcam at 00:00–00:21). The angled orientation of the parking spaces indicates the lot is intended for one-way travel,

[4] Shelburg testified he parked "approximately 30, 35 feet to the south, southeast of [Wittenberg's] vehicle," but the videos reveal he was much closer.

with an entrance at one end and an exit at the other. (Exhibit 1 Shelburg Dashcam at 00:38; Exhibit A Edwards Dashcam at 00:00–00:21). Shelburg acknowledged he would have had to move his vehicle for Wittenberg to leave, testifying "I would have had to have reversed because the curb was in front of him, so he would have had to have packed up and then pulled out." (Suppression Tr. p. 7 L. 8–10). And even if Wittenberg could have maneuvered his vehicle around Shelburg's, his only option to exit the lot would have been to drive against the designated flow of traffic and out the entrance—unusual behavior which may have been deemed "suspicious" and triggered another seizure.

When Shelburg and Frederick approached on foot, there was a point when Frederick was directly behind and within feet of Wittenberg's car. (Suppression Tr. p. 27 L. 18–p. 28 L. 5); see also (Exhibit 1 Shelburg Dashcam at 00:52–00:55). When defense counsel pointed out to Shelburg that in order to leave Wittenberg would have had to drive backward toward

Frederick and potentially hit her, Shelburg agreed that was true but stated Frederick would have moved out of the way. (Suppression Tr. p. 27 L. 18–p. 28 L. 5, p. 28 L. 22–p. 29 L. 17). Whether Frederick would have moved is irrelevant to the question presented. Her presence was among the totality of the circumstances of the encounter, and it strains credulity to believe a reasonable person would have felt comfortable reversing toward a police officer in such close proximity; driving backwards toward Frederick may have been interpreted as aggression (or even assault), which would have justified a subsequent seizure. Additionally, Frederick's positioning behind Wittenberg's car cannot be dismissed merely because it was brief. When unsupported by probable cause or reasonable suspicion, there is no such thing as a *de minimis* seizure. See Florida v. Royer, 460 U.S. 491, 498 (1983) (a person "may not be detained even momentarily without reasonable, objective grounds for doing so . . . ." (citing United States v. Mendenhall, 446 U.S. 544, 546 (1980));

State v. Coleman, 890 N.W.2d 284, 299 (Iowa 2017) ("[E]ven *de minimus* extensions of traffic stops [without probable cause or reasonable suspicion] are not acceptable."). Frederick's position directly behind Wittenberg's car contributes to the conclusion that a seizure occurred.

The totality of the circumstances demonstrates that a reasonable person in Wittenberg's position would not have felt free to leave. He was followed despite committing no traffic infractions. After he legally parked, Shelburg initially stopped some distance away, then pulled much closer—blocking the lot exit—and shined an extremely bright spotlight at him. Shelburg testified he would have had to move his car to allow Wittenberg to leave. Shelburg and Frederick approached on foot shining flashlights at Wittenberg, with Frederick positioned directly behind his vehicle at one point. The encounter involved demonstrations of police authority and substantial impairment of Wittenberg's ability to leave. Because a reasonable person faced with these circumstances

would not have felt free to disregard the police and leave, Wittenberg was seized.

B. The community caretaking exception is inapplicable to the facts of this case.

Although the district court did not reach the issue because it concluded no seizure occurred, the State contended (and may contend on appeal) that the seizure fell under the community caretaking exception to the warrant requirement. (Resistance to Motion to Suppress p. 1 ¶ 4) (App. p. 11). That claim is incorrect, because the requirements of the community caretaking exception are not met here.

The community caretaking exception "involves the duty of police officers to help citizens an officer reasonably believes may be in need of assistance." State v. Coffman, 914 N.W.2d 240, 244 (Iowa 2018) (quoting State v. Tyler, 867 N.W.2d 136, 170 (Iowa 2015)). "The community caretaking exception has three branches: '(1) the emergency aid doctrine, (2) the automobile impoundment/inventory doctrine, and (3) the 'public servant' exception.'" Id. at 244 (quoting Tyler, 867

N.W.2d at 170)). Analysis of the exception's applicability occurs in three stages: "(1) was there a seizure within the meaning of the Fourth Amendment?; (2) if so, was the police conduct bona fide community caretaker activity?; and (3) if so, did the public need and interest outweigh the intrusion upon the privacy of the citizen?" Id. (quoting State v. Crawford, 659 N.W.2d 537, 543 (Iowa 2003)).

First, as argued above and incorporated here by reference, a seizure occurred when officers parked close to Wittenberg's car blocking the lot exit, shined a spotlight and flashlights at him, and approached on foot with one officer directly behind his vehicle.

Second, the police conduct was not bona fide community caretaker activity. It is unclear which community caretaking branch the State believed applied; in its resistance, it broadly asserted that the exception applied and cited Coffman but provided nothing more, and at the hearing the prosecutor presented no additional argument on the subject. (Resistance

to Motion to Suppress p. 1 ¶ 4 and n. 1) (App. p. 11). In any event, none of the three branches apply.

The emergency aid doctrine requires that "the officer has an immediate, reasonable belief that a serious, dangerous event is occurring." Coffman, 914 N.W.2d at 244 (quoting Tyler, 867 N.W.2d at 170)). Shelburg did not articulate a belief that any immediate, serious, dangerous event was occurring; he said Wittenberg committed no traffic infractions while Shelburg was following him, but he was unsure if Wittenberg was aware he had entered a parking lot. See (Suppression Tr. p. 5 L. 22–p. 6 L. 5, p. 7 L. 25–p. 8 L. 3, p. 19 L. 8–10; Trial Tr. p. 85 L. 25–p. 86 L. 15). Nothing about these circumstances would warrant a conclusion that serious danger was present, and Shelburg made no such claim.

The impoundment/inventory branch plainly has no application, because no impoundment occurred.

Finally, the public servant branch does not apply. This branch is "very similar" to the emergency aid branch; the

distinction is that, while the emergency aid branch requires immediate, serious danger, the public servant branch requires that the "officer must be actually motivated by a perceived need to render aid or assistance" and that motivation "must be such that a reasonable person under the circumstances would have thought an emergency had existed." State v. Kern, 831 N.W.2d 149, 173 (Iowa 2013) (internal quotations and citations omitted). At the outset, it is questionable whether Shelburg—who followed Wittenberg after seeing him leave a bar shortly after 2:00 a.m.—was actually motivated by any perceived need to render aid or assistance, rather than to investigate a hunch. See (Suppression Tr. p. 5 L. 3–13; Trial Tr. p. 84 L. 3–11). Again, the best he could muster was that he was unsure if Wittenberg knew he was in a parking lot; he did not articulate any reason Wittenberg would require aid or assistance based upon that circumstance. See (Suppression Tr. p. 5 L. 22–p. 6 L. 5, p. 7 L. 25–p. 8 L. 3; Trial Tr. p. 85 L. 25–p. 86 L. 15). Relatedly, a reasonable person under the

circumstances would have had no reason to think an emergency existed. Wittenberg committed no traffic violations as Shelburg followed him, indicating Wittenberg was in no distress and his vehicle was functioning without issue. See (Suppression Tr. p. 19 L. 8–10). And any confusion about whether Wittenberg knew he had pulled into the lot would have been dispelled when he pulled into a parking spot, parked, and shut his vehicle off. See (Exhibit 1 Shelburg Dashcam at 00:00–00:10). Quite simply, nothing was wrong; there was no proverbial "flat tire" situation which the public servant branch is meant to address. See State v. Kurth, 813 N.W.2d 270, 277–78 (Iowa 2012) ("[A]ssisting a motorist with a flat tire might be an example of the public servant doctrine, whereas providing first aid to a person slumped over the steering wheel with a bleeding head gash would fall under the emergency aid doctrine.) (internal quotation omitted, citing Crawford, 659 N.W.2d at 541–42)).

Because no community caretaking branch applies, Shelburg was not engaged in bona fide community caretaking activity and the analysis should end here. However, even if this Court concludes bona fide community caretaking activity was taking place, any public need or interest served was outweighed by the intrusion upon Wittenberg's privacy. The need to confirm Wittenberg knew he was in a parking lot after he parked in a spot and shut off his car serves a marginal-at-best public need or interest. But seizing Wittenberg when he had done absolutely nothing wrong was a substantial intrusion on his privacy; like all citizens, Wittenberg had a constitutional right to go about his business without unwarranted police interference. Because the intrusion on his privacy outweighs any public need or interest served by the intrusion, this Court should conclude the community caretaking exception does not apply even if bona fide community caretaking activity occurred.

Wittenberg was seized with no probable cause or reasonable suspicion, and the community caretaking exception to the warrant requirement does not apply. Therefore, the seizure was in violation of his rights under the Fourth Amendment to the United States Constitution and Article I, section 8 of the Iowa Constitution. The district court erred in denying his motion to suppress on that ground.

Conclusion

Wittenberg was seized, because the totality of the circumstances would not lead a reasonable person in his position to believe they were free to disregard the police and leave. The community caretaking exception to the warrant requirement is inapplicable. Because the seizure was conducted in violation of Wittenberg's constitutional rights, this Court should hold that all evidence stemming from that seizure must be suppressed and remand the case for further proceedings.

REQUEST FOR ORAL ARGUMENT

Counsel requests to be heard in oral argument.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $3.80, and that amount has been paid in full by the Office of the Appellate Defender.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR BRIEFS

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

> [X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 3,921 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: 12/09/22

Josh Irwin
Assistant Appellate Defender
Appellate Defender Office
Lucas Bldg., 4th Floor
321 E. 12th Street
Des Moines, IA 50319
(515) 281-8841
jirwin@spd.state.ia.us
appellatedefender@spd.state.ia.us