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IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 17-0317

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CODY T. SMITH,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT
OF CLARKE COUNTY
THE HONORABLE MONTY W. FRANKLIN (TRIAL AND MOTION TO SUPPRESS)

APPELLANT'S FINAL BRIEF
AND
REQUEST FOR ORAL ARGUMENT

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I, Scott A. Michels, hereby certify that I will file the attached Brief by filing an electronic copy thereof to the Clerk of the Supreme Court, Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa, on September 13, 2017.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Constitutional Amendments

Federal Cases

Iowa Cases

Other State Cases

Other Resources

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. The Warrantless Seizure of the Vehicle in Which Defendant Was an Occupant Violated the Fourth Amendment to the United States Constitution Because the Seizure was not Performed Pursuant to a Valid Community Caretaking Function.

Legal Authority

Constitutional Amendments

U.S. Const. Amend. IV

Federal Cases

Cady v. Dombrowski, 413 U.S. 433, 93 S.Ct. 2523, 37 L.Ed.2d 706 (1973)
Mincy v. Arizona, 437 U.S. 385 (1978)
U.S. v. Collins, 321 F.3d 691 (8th Cir. 2003)
United States v. Dunbar, 470 F.Supp. 704 (D.Conn 1979)
U.S. v. Rideau, 949 F.2d 718, (5th Cir. 1991)
U.S. v. Terry, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)

Iowa Cases

State v. Brunk, 2006 WL 2706145 (Iowa App.) (unpublished)
State v. Casey, 2010 WL 2090858 (Iowa App.)
State v. Carlson, 548 N.W.2d 138 (Iowa 1996)
State v. Crawford, 659 N.W.2d 537 (Iowa 2003)
State v. Heminover, 619 N.W.2d 353 (Iowa 2000)
State v. Hilleshiem, 291 N.W.2d 314 (Iowa 1980)
State v. Kreps, 650 N.W.2d 636 (Iowa 2002)
State v. Kurth, 813 N.W.2d 270 (Iowa 2012)
State v. Mitchell, 498 N.W.2d 691 (Iowa 1993)
State v. Nikolsky, 2004 WL 151070 (Iowa App.) (unpublished)
State v. Rave, 2009 WL 3381520 (Iowa App.) (unpublished)
State v. Sellers, 2015 WL 1055087 (Iowa App.) (unpublished)
State v. VanWyk, 2011 WL 2420708 (Iowa App.) (unpublished)

Other State Cases

Corbin v. State, 85 S.W.3d 272 (Tex. Crim. App. 2002)
State v. Chisholm, 696 P.2d 41 (Wash. App. 1985)
State v. Rinehart, 617 N.W.2d 842 (S.D.2000)

Other Resources

Edwin J. Butterfoss, *Bright Line Seizures: The Need for Clarity in Determining When Fourth Amendment Activity Begins*, 79 J. Crim. L. & Criminology 437, 471 n. 80 (1988)

Wayne R. LaFave, 3 SEARCHES AND SEIZURE § 6.6(c) (2004)

Jason S. Marks, *Taking Stock of the Inventory Search: Has the Exception Swallowed the Rule?*, 10 Crim. Justice 11, 12 (1995)

Mary E. Neumann, *The Community Caretaker Doctrine: Yet Another Fourth Amendment Exception*, Am. J. Crim L. 325, 333-34 (1999)

II. The Warrantless Seizure of the Vehicle Which Defendant Was an Occupant, and the Subsequent Search of Defendant Violated Article I, Section 8 of the Iowa Constitution.

Legal Authority

Federal Cases

United States v. Dunbar, 470 F.Supp. 704, (D.Conn 1979)

Iowa Cases

State v. Carlson, 548 N.W.2d 138 (Iowa 1996)

State v. Cline, 617 N.W.2d 277 (Iowa 2000)

State v. Cullison, 173 N.W.2d 533 (Iowa 1970)

State v. Garrison, 791 N.W.2d 428, 2010 WL 3661815 (Iowa App.) (unpublished)

State v. Hoskins, 711 N.W.2d 720 (Iowa 2006)

State v. James, 393 N.W.2d 465 (Iowa 1986)

State v. Jones, 274 N.W.2d 273 (Iowa 1979)

State v. Nikolsky, 2004 WL 151070 (Iowa App.) (unpublished)

State v. Ochoa, 792 N.W.2d 260 (Iowa 2010)

State v. Sanders, 312 N.W.2d 534 (Iowa 1981)

State v. Strong, 493 N.W.2d 834 (Iowa 1992)

Other State Cases

City of Highland Park v. Lee, 683 N.E.2d 962 (Ill. App. Ct. 1997)

City of Troy v. Ohlinger, 475 N.W.2d 54 (Mich. 1991)

Comm. v. Canavan, 667 N.E.2d 264 (Mass. 1996)
Provo City v. Warden, 844 P.2d 360 (Utah App. 1992)
State v. Angelos, 936 P.2d 52 (Wash. Ct. App. 1997)
State v. Bernier, 1995 WL 785837 (Conn. Super. Ct. 1995)
State v. Gray, 1997 WL 537861 (Wash. Ct. App. 1997) (unpublished)

Other Resources

Edwin J. Butterfoss, *Bright Line Seizures: The Need for Clarity in Determining When Fourth Amendment Activity Begins*, 79 J. Crim. L. & Criminology 437, 471 n. 80 (1988)

Jason S. Marks, *Taking Stock of the Inventory Search: Has the Exception Swallowed the Rule?*, 10 Crim. Justice 11, 12 (1995)

STATEMENT OF THE CASE

Nature of the Case

This case is before the Court on Mr. Smith's appeal from the District Associate Court's order denying Mr. Smith's motion to suppress evidence. The District Associate Court held that the officer's stop of the vehicle Mr. Smith was a passenger of was justified under the community caretaking exception to the warrant requirement of the Fourth Amendment to the United States Constitution and Article I, section 8 of the Iowa Constitution. Consequently, the District Associate Court denied Mr. Smith's motion to suppress and Mr. Smith appealed the District Associate Court's ruling.

Course of Proceedings

Mr. Smith was charged by way of Trial Information filed on May 12, 2016, with Operating While Intoxicated, First Offense, in violation of Iowa Code section 321J.2. Trial Information; App. 1-2. The offense was alleged to have occurred on or about April 2, 2016. Trial Information; App. 1-2. Prior to trial, Mr. Smith filed a timely motion to suppress evidence alleging the stop of the motor vehicle in which he was riding violated the Fourth Amendment of the United States Constitution and Article I, section 8 of the Iowa Constitution. Motion to Suppress Evidence; App. 3-5. The trial court denied the motion, ruling that the arresting

officer had grounds to stop the vehicle based upon the community caretaking exception to the warrant requirement. Ruling and Order; App. 6-9.

Mr. Smith asked the District Associate Court to reconsider its ruling and for expanded findings of facts and conclusions of law. Motion to Reconsider and Request for Expanded Findings of Fact and Conclusions of Law; App. 10-28. The District Associate Court denied the motion. Order (October 6, 2016); App. 29-30. The matter proceeded to a stipulated trial on the minutes of testimony on December 9, 2016. Written Waiver of Jury Trial and Stipulation to Trial on the Minutes; App. 31-36. On February 3, 2017, the District Associate Court announced its verdict, finding Mr. Smith guilty of operating while intoxicated, first offense, in violation of Iowa Code section 321J.2. Findings of Fact, Conclusions of Law and Verdict; Judgment and Sentence OWI, First Offense; App. 37-44. Notice of Appeal was timely filed on February 28, 2017. Notice of Appeal; App. 49-50.

Statement of Facts

On April 2, 2016, at approximately 4:30 a.m., Officers Smith and Fitzpatrick of the Osceola Police Department were dispatched to a vehicle in the ditch of rural Clarke County. Supp. Tr. p. 8:11-18. Dispatch advised that a person had been seen walking eastbound from the accident. Supp. Tr. p. 8:24-9:6. Dispatch did not advise the officers of any apparent injuries to the person walking

from the scene or that the person was having any trouble walking. Supp. Tr. p. 12:10-23.

Upon arrival at the scene, the officers observed a single vehicle in the ditch. Supp. Tr. p. 12:24-13:7. There were no occupants in the vehicle, nor was there any property damage. Supp. Tr. p. 13:1-7. Officer Fitzpatrick ran the license plate which showed the vehicle was registered to Steven Smith. Supp. Tr. p. 8:20-23.

Officer Smith drove eastbound, attempting to locate the individual walking from the scene. Supp. Tr. p. 8:24-9:5. Unable to locate this individual, Officer Smith went back to the accident site. Supp. Tr. p. 8:24-9:5. Officer Smith searched the vehicle and located a Minnesota driver's license belonging to Cody Smith. Supp. Tr. p. 8:24-9:5. While searching the vehicle, Officer Smith did not observe any blood or other signs of injury to any occupant. Supp. Tr. p. 13:20-25.

While at the accident site, Officer Smith observed a van drive past heading eastbound. Supp. Tr. p. 8:24-9:10. Officer Smith observed the driver of the van to be the sole occupant. Supp. Tr. p. 14:1-3. Officer Smith was advised that the van had pulled into a residential driveway, so he headed toward the residence. Supp. Tr. p. 14:4-9. As Officer Smith neared the residence, he observed the van pull out of the driveway. Supp. Tr. p. 14:7-9. Officer Smith did not observe anyone get into the van. Supp. Tr. p. 14:10-12. Officer Smith followed the van and ran the license plate, which came back registered to a Noreen Smith. Supp. Tr. p. 9:6-10.

Officer Smith noticed that the van and the car in the ditch were registered to the same address. Supp. Tr. p. 9:20-22.

Officer Smith activated his emergency lights and conducted a traffic stop of the van. Supp. Tr. p. 15:24-16:7. At the time he activated his lights, as far as Officer Smith was aware, the driver was the sole occupant of the van. Supp. Tr. p. 16:18-24. Furthermore, Officer Smith had neither heard nor been made aware of any calls seeking medical attention or other assistance. Supp. Tr. p. 15:9-20. Upon approaching the van, Officer Smith observed a passenger, who turned out to be the Defendant, Cody T. Smith. Findings of Fact, Conclusions of Law and Verdict p. 3; App. 39. Subsequent to the stop, Officer Smith observed Mr. Smith exhibit indicia of alcohol consumption. Findings of Fact, Conclusions of Law and Verdict p. 3; App. 39. Mr. Smith was asked to submit to field sobriety tests, placed under arrest for OWI, and transported to the Clarke County Law Center where he provided a breath sample exceeding .08. Findings of Fact, Conclusions of Law and Verdict p. 4; App. 40. Mr. Smith was charged by way of Trial Information with Operating While Intoxicated, First Offense. Trial Information; App. 1-2.

Further facts will be set forth as necessary in this brief.

Routing Statement

This case should be retained the Iowa Supreme Court because it presents a substantial issue of first impression; specifically, Defendant argues Article I,

section 8 of the Iowa Constitution requires different standards be applied to stops based upon the community caretaking exception to the warrant requirement. Iowa R. App. P. 6.1101(2)(c).

Legal Argument

I. The Warrantless Seizure of the Vehicle in Which Defendant Was an Occupant Violated the Fourth Amendment to the United States Constitution Because the Seizure was not Performed Pursuant to a Valid Community Caretaking Function.

Preservation of Error: Mr. Smith preserved error by timely filing a Motion to Suppress Evidence, obtaining a ruling on same, and timely filing his Notice of Appeal.

Standard of Review: Mr. Smith alleges a violation of his constitutional rights under the Fourth Amendment to the United States Constitution. As such, the court's review is de novo.

Argument: The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons ... against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause...." U.S. Const. amend. IV. Subject to a few carefully drawn exceptions, warrantless searches are per se unreasonable. *State v. Carlson*, 548 N.W.2d 138, 140 (Iowa 1996). Evidence obtained in violation of the

Fourth Amendment is inadmissible unless the state proves by a preponderance of the evidence that a recognized exception to the warrant requirement applies. *Id*.

The State and the District Associate Court relied upon the community caretaking exception to the warrant requirement to justify Officer Smith's seizure. The United States Supreme Court in *Cady v. Dombrowski*, 413 U.S. 433, 441, 93 S.Ct. 2523, 2528, 37 L.Ed.2d 706, 714-15 (1973), explained, "[a]s the name implies, this exception permits a warrantless search [and seizure] of an automobile for the protection of the public and is 'totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.'" The Court concluded that searches made in the performance of community caretaking functions do not require warrants and are subject to "only the general standard of 'unreasonableness' as a guide in determining" constitutionality. *Id*. at 448. "In a community caretaker case, a court determines reasonableness by balancing the public need and interest furthered by the police conduct against the nature of the intrusion upon the privacy of the citizen." *State v. Crawford*, 659 N.W.2d 537, 542 (Iowa 2003).

To determine whether this exception applies, the Court asks three questions:

(1) Was there a seizure within the meaning of the Fourth Amendment?
(2) If so, was the police conduct a bona fide community caretaker activity?
(3) If so, did the public need and interest outweigh the intrusion upon the privacy of the citizen?

Id. at 543. "This balancing requirement to determine reasonableness requires an objective analysis of the circumstances confronting the police officer: …" *Id*., citing *Carlson*, 548 N.W.2d at 142-43.

A. Seizure

The first issue is whether there was a "seizure" within the meaning of the Fourth Amendment. *State v. Rave*, 2009 WL 3381520 at *4 (Iowa App.) (unpublished). "Implicit in any community caretaking case is the fact that there has been a seizure within the meaning of the Fourth Amendment. Otherwise there would be no need to apply a community caretaking exception." *State v. Crawford*, 659 N.W.2d at 543. An investigatory stop of a vehicle, even though it is temporary and for a limited purpose, is a seizure for the purposes of the Fourth Amendment. *State v. Kreps*, 650 N.W.2d 636, 641 (Iowa 2002).

Officer Smith unquestionably seized the vehicle in which Mr. Smith was riding. Officer Smith, while in his marked patrol vehicle, activated his emergency lights to effectuate a stop of the van. Supp. Tr. p. 15:24-16:1. Officer Smith testified the activation of his emergency lights was a show of authority and an order to pull the vehicle over. Supp. Tr. p. 16:2-7. The State did not contend at the suppression hearing that a seizure did not occur, further, the District Associate Court held the van was seized. Ruling and Order; App. 6-9.

B. Bona Fide Community Caretaker Activity

"The second step in the analysis, whether the action taken by the officer was a bona fide community caretaker activity, turns on whether the facts available to the officer at the moment of the seizure would have warranted a reasonable person to believe either an emergency or some other difficulty requiring general police assistance existed." *State v. Brunk*, 2006 WL 2706145 at *3 (unpublished) (Iowa App.), *citing Crawford*, 659 N.W.2d at 541-543. There are three types of community caretaking activities: (1) rendering emergency aid; (2) automobile impoundment/inventory; and (3) acting as a public servant. *State v. Crawford*, 659 N.W.2d at 541.

Only the emergency aid and public servant activities could possibly apply to the seizure of Mr. Smith's person. The District Associate Court failed to articulate which function of the community caretaking exception it was relying upon, so both will be addressed. The emergency aid and public service functions of the community caretaking exception have been described as follows:

> Under the emergency aid doctrine, the officer has an immediate, reasonable belief that a serious, dangerous event is occurring…[I]n contrast, the officer in a public servant situation might or might not believe that there is a difficulty requiring general assistance. For example, an officer assists a motorist with a flat tire under the public servant doctrine, but an officer providing first aid to a person slumped over the steering wheel with a bleeding gash on his head acts pursuant to the emergency aid doctrine.

State v. Crawford, 659 N.W.2d at 542, citing Mary E. Neumann, *The Community Caretaker Doctrine: Yet Another Fourth Amendment Exception*, Am. J. Crim L. 325, 333-34 (1999).

1. The Emergency Aid Exception

The emergency aid exception is justified on the grounds that the underlying motivation for a particular intrusion is to preserve life rather than search for evidence to be used in a criminal investigation. *State v. Carlson*, 548 N.W.2d at 141. The emergency aid exception is subject to strict limitations, and for the doctrine to apply the State must demonstrate that a reasonable person under the circumstances would have believed an emergency existed. *Id.* at 141-42. To establish "reasonableness," the police must offer specific and articulable facts indicating the propriety of their actions (i.e. that an emergency existed). *Id.* at 142.

Officer Smith stated that he was checking on the welfare of the person involved in the accident. Supp. Tr. p. 11:6-9. However,"[u]nder the emergency aid doctrine, the officer has [to have] an *immediate, reasonable belief that a serious, dangerous event is occurring…*" *State v. Crawford*, 659 N.W.2d at 542, citing Mary E. Neumann, *The Community Caretaker Doctrine: Yet Another Fourth Amendment Exception*, Am. J. Crim L. 325, 333-34 (1999). (Emphasis added).

The facts known to Officer Smith do not support an *immediate reasonable belief that a serious, dangerous event was occurring*. Officer Smith was

dispatched to an accident involving a lone car in the ditch. Supp. Tr. p. 8:15-18. Dispatch advised him that a person was seen walking away from the accident. Supp. Tr. p. 8:24-9:5. Officer Smith received no information that the person leaving the accident appeared to be injured in any manner, nor was he advised that the person was having any difficulty walking. Supp. Tr. p. 12:10-23. Officer Smith checked inside the vehicle and observed no signs of blood or potential injury to any occupant that may have been in the vehicle. Supp. Tr. p. 13:20-25. Additionally, Officer Smith had not been made aware of any calls seeking assistance, medical or otherwise. Supp. Tr. p. 15:9-20.

The emergency aid exception has not been widely applied; however, it has been justified in a few instances. In *State v. Crawford*, the Iowa Supreme Court upheld the stop of the defendant's vehicle after dispatch received a call that an individual had taken some pills and had become physically aggressive to the caller. *State v. Crawford* 659 N.W.2d at 539-40. The caller advised the defendant was unaware of where he was and was wanting an officer to come and take him home. *Id.* at 540. While the officer was en route, dispatch received another call that the defendant had left in a pickup. *Id.* The officer's stop of the vehicle was justified under the emergency aid exception to the community caretaking function, holding "[w]e think a reasonable person would conclude the action [the officer] took in the interest of public safety and emergency aid was justified." *Id.* at 543.

In *U.S. v. Collins*, the Eighth Circuit held that officer's actions done in the interest of protecting the community did not violate the Fourth Amendment. *U.S. v. Collins*, 321 F.3d 691, 695 (8th Cir. 2003). Officers responded to a "shots fired" call. *Id.* at 693. The officers observed a vehicle parked in the area where the shots had been heard with two occupants slumped over in the front seat. *Id.* While officers checked the individuals to determine if the men had been shot, they observed a firearm in the vehicle. *Id.* The Court concluded that it was reasonable for the officers to check to determine if the individuals were in need of immediate aid, and a failure to do so would have been "irresponsible." *Id.* at 695.

Another instance where the emergency aid exception upheld a seizure is found in *U.S. v. Rideau*, 949 F.2d 718, 720 (5th Cir. 1991), *reversed on other grounds by U.S. v. Rideau*, 969 F.2d 1572 (5th Cir. 1992). The Fifth Circuit upheld the stop of a possibly drunk pedestrian, stumbling in the road at night, in dark colored clothing. *Id.* at 720. The Court held the "officers would have been derelict in their duties had they not stopped Rideau to check on his condition. A man wearing dark clothing who is standing in the middle of the road and possibly intoxicated presents a hazard to himself and to others." *Id.*

While all of these seizures have been justified, there are others where the facts did not justify a belief that emergency aid was required. For instance, the Iowa Supreme Court held that detention exceeded the scope of the community

caretaking function after a vehicle ran over a road sign lying in the roadway. *State v. Kurth*, 813 N.W.2d 270 (Iowa 2012). The officer heard a loud crash, and observed a vehicle "enveloped in a cloud of smoke or dust." *Id.* at 271. The officer observed a road sign lying in the roadway, but was able to determine that the sign was already in the roadway when the vehicle ran over the top of it. *Id.* The vehicle was capable of being driven the entire time the officer followed it. *Id.* at 278. The officer followed the vehicle into a parking lot, where it parked legally. *Id.* at 272. Once the vehicle parked, the officer observed insignificant damage to the front of the vehicle. *Id.* The officer activated his emergency lights and blocked the vehicle in its parking space. *Id.*

Another such example can be found in *State v. Sellers*, 2015 WL 1055087 (Iowa App.) (unpublished). In *Sellers*, the defendant was pulled over on the shoulder of the road, completely off the travel portion of the roadway. *State v. Sellers*, 2015 WL 1055087 at *1. The officer pulled in behind Sellers and shone his spotlight on her vehicle. *Id.* Sellers used her turn signal and began to pull forward to merge onto the roadway. *Id.* The officer activated his lights to stop her vehicle. *Id.* While the officer may have believed that the driver needed emergency aid as he approached, as soon as she began to pull away any reasonable belief of such, dissipated. *Id.* at *4.

Dissimilar to *Crawford*, Officer Smith did not have any information that Mr. Smith may be critically injured. Unlike *Collins* and *Rideau*, no facts were available to Officer Smith that Mr. Smith was intoxicated or under the influence of drugs. Nor were there any facts known to Officer Smith that Mr. Smith posed a risk to either himself or others. In fact, at the time Officer Smith stopped the van, he had no idea if Mr. Smith was even inside the vehicle. Supp. Tr. p. 14:10-12; 16:18-24.

Officer Smith testified that he stopped the van because it seemed suspicious that a vehicle registered to the same address as the vehicle in the ditch would be driving around, and he wanted to investigate to see if it was involved in the accident or if there were injuries to anyone. Supp. Tr. p. 9:11-13; 10:2-7; 18:8-9. The foundation of the community caretaking function is that it must be "totally divorced" from the investigative function. *See Cady v. Dombrowski*, 413 U.S. at 441. The fact that Officer Smith ran the license plate of the van prior to stopping it is indicative that he was acting in an investigative role, as opposed to a public safety role. *See State v. Sellers*, 2015 WL 1055087 at *4 (Iowa App.) ("[The officer's] decision to first run [defendant's] plates instead of immediately checking on her condition is inconsistent with his claim that he suspected the driver might have needed medical assistance."); *see also State v. Kurth*, 813 N.W.2d at 279

("That action [of calling the driver's plates in] seems inconsistent with a public safety purpose but is certainly consistent with an investigative purpose.")

There were no facts known to Officer Smith that immediate emergency aid was needed or that a serious, dangerous event was occurring. Officer Smith did not even have articulable facts available to him that there was a passenger inside the van.

2. The "Public Servant" Function

For the public servant exception to be applicable, law enforcement must be responding to a specific identified problem that requires specific assistance of the officer. The only legal description of a qualifying public servant action provided by the Iowa Supreme Court is when the officer "might or might not believe there is a difficulty requiring his general assistance." *State v. Crawford*, 659 N.W.2d at 542; citing Naumann, *The Community Caretaker Doctrine: Yet another Fourth Amendment Exception*, 26 Am.J.Crim.L 325, 330-41 (1999). This is markedly different than the emergency aid exception, wherein law enforcement searches or seizes an individual in order to protect or preserve life or avoid serious injury. See *Mincy v. Arizona*, 437 U.S. 385, 392 (1978). The difference is summed up with the commonly used law enforcement mantra: "to protect and to serve." Emergency aid comes about by a need to protect. Public servant comes about by a duty to serve the individual citizen or community in general.

At first blush, the *Crawford* description of the public servant function runs the risk of being crosswise with the constitutional requirement that a standard regulating a search or seizure of a person cannot leave application and implementation to the discretion of the officer in the field. *State v. Hilleshiem*, 291 N.W.2d 314, 316 (Iowa 1980). However, when *Crawford's* public servant description is taken into context with a couple of well-established search and seizure principals, a workable solution comes into focus.

First, the reasonableness of governmental action that intrudes upon a privacy interest of a citizen is always analyzed under an objective standard. "In determining the reasonableness of the particular search or seizure, the court judges the facts 'against an objective standard: would the facts available to the officer at the moment of the seizure or search warrant a man of reasonable caution in the belief that the action taken was appropriate?'" *State v. Heminover*, 619 N.W.2d 353, 357 (Iowa 2000) (*abrogated* on other grounds); quoting *U.S. v. Terry*, 392 U.S. 1, 21-22 (1968). Second, actions taken under the community caretaking function "must be limited to the justification thereof, 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." *State v. Kurth*, 813 N.W.2d at 278; quoting *State v. Carlson*, 548 N.W.2d at 142 (Iowa 1996).

The aforementioned principals being established; the plain language of the *Crawford* public function standard first requires objective facts that lead a reasonable officer to conclude that a difficulty or problem exists. The difficulty or problem to be addressed must be one facing the person to be seized or an identified member of the public, after all, the purported purpose behind the seizure would be to render assistance.

Examples of specific difficulties or problems implicating the public servant function include things like:

- A burned-out taillight, even though this was not a traffic violation at that time. *State v. Mitchell*, 498 N.W.2d 691 (Iowa 1993).

- Headlights not illuminated when driving at night in a parking lot in a "high crime area" full of pedestrians, some of whom were intoxicated and less likely to see a vehicle with its headlights off. *State v. Rave*, 2009 WL 3381520 at *4. (Iowa App.).

- A possibly drunk individual, wearing dark clothing and stumbling in the road at night in a high crime area. *U.S. v. Rideau*, 969 F.2d 1572, 1573 (5th Cir. 1992).

- Personal property in peril due to being left on the top of a vehicle driving down a highway, *State v. Chisholm*, 696 P.2d 41 (Wash. App. 1985).

- Specific road hazards ahead. See discussion in *U.S. v. Dunbar*, 470 F.Supp. 704, 707 (D.Conn 1979).

Specific instances where no objective evidence established a problem or difficulty, include:

- Brake lights of a parked vehicle illuminating two times. *State v. VanWyk*, 2011 WL 2420708 (Iowa App.) (unpublished).

- A motorist appearing to be potentially lost. *State v.* Casey, 2010 WL 2090858 at *4 (Iowa App.) (unpublished).

- A motorist who was pulled over on the shoulder had already began to merge onto the roadway. *State v. Sellers*, 2015 WL 1055087 (Iowa App.) (unpublished).

Officer Smith testified that he stopped the van because he believed the driver of the van may have needed assistance in trying to find the driver of the car in the ditch because both vehicle were registered to the same address. Supp. Tr. p. 19:1-9. However, the facts do not support a finding that the driver of the van needed assistance. Officer Smith observed the van drive past the accident scene where he was sitting in his marked patrol vehicle. Supp. Tr. p. 9:6-10; 15:21-23. Furthermore, Officer Smith had not been made aware of any calls for service that someone was out looking for the driver of the car. Supp. Tr. p. 15:9-20.

The actions of the driver of the van can be likened to those in *Sellers*. The Iowa Court of Appeals held "[n]either was there any indication Sellers needed the deputy to perform any public service function or to assist her. When Sellers signaled her intent to merge back onto the road and carry on her way, she also indicated she did not require or expect any assistance from whoever had stopped behind her." *State v. Sellers*, 2015 WL 1055087 at *4.

As in *Sellers*, the driver of the van indicated by his actions that he was not requiring assistance. Had the driver of the van needed assistance, he most certainly would have stopped at the scene of the accident where law enforcement was clearly present and sought it. Instead, the van proceeded on its way past the accident site and Officer Smith. Supp. Tr. p. 9:6-10. These are not the actions of someone who is in need of assistance.

Similar to *Kurth*, the officer in this case could have taken another course of action in lieu of activating his emergency lights and stopping the van. The Court in *Kurth* indicated that the officer could have advised the driver of the damage to the vehicle by simply walking up to the vehicle and initiating a consensual encounter. *State v. Kurth*, 813 N.W.2d at 278. In this case, Officer Smith could have called the residence to which the vehicle was registered to determine if they were aware of the accident or any injuries. There were lesser intrusive means available.

C. Balancing

Should this Court determine there was a bona fide community caretaking activity, it must determine if the public need outweighs the privacy interest. In conducting this balancing test it must be remembered that a seizure of one's person, even one that takes only a few seconds, is "a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong

resentment." *U.S. v. Terry*, 392 U.S. at 17. Additionally, out of all of the community caretaking alternatives, the public servant function has the greatest potential for abuse.

"The 'community caretaking' exception should be cautiously and narrowly applied to minimize the risk that it will be abused or used as pretext for conducting an investigatory search for criminal evidence." *State v. Nikolsky*, 2004 WL 151070 at *6 (Iowa App.) (unpublished), citing *State v. Rinehart*, 617 N.W.2d 842, 844 (S.D.2000) (internal citations omitted); see also Jason S. Marks, *Taking Stock of the Inventory Search: Has the Exception Swallowed the Rule?*, 10 Crim. Justice 11, 12 (1995) (noting that community caretaking searches can be used to hide investigatory searches and that proving pretext is extremely difficult); Edwin J. Butterfoss, *Bright Line Seizures: The Need for Clarity in Determining When Fourth Amendment Activity Begins*, 79 J. Crim. L. & Criminology 437, 471 n. 80 (1988) (recognizing the danger that police could use the community caretaking exception as a pretext for investigatory encounters).

In order to protect against abuse, courts must first require a compelling urgency necessitating an immediate seizure of the individual as compared to taking a less restrictive alternative approach. This is because "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." *State v. Carlson*, 548 N.W.2d at 142. Professor

LaFave explains, "it is useful to ask whether the official had reason to believe there was 'a compelling urgency' for the action." Wayne R. LaFave, 3 SEARCHES AND SEIZURE § 6.6(c) (2004).

In evaluating whether or not the public need and interest for the seizure outweigh the intrusion upon the privacy of the citizen, the court may look to a list of four non-exclusive factors:

1. The nature and level of the distress exhibited by the individual;
2. The location of the individual;
3. Whether or not the individual was alone and/or had access to assistance other than that offered by the officer; and
4. To what extent the individual, if not assisted, presented a danger to himself or others.

Corbin v. State, 85 S.W.3d 272, 277 (Tex. Crim. App. 2002).

There were very minimal, if any, signs of distress available to Officer Smith. The only possible sign of distress known of Officer Smith was that a car was in the ditch and the driver had been seen walking away. Supp. Tr. p. 8:15-9:5. Otherwise, the caller provided no information that the driver appeared injured or was having trouble walking. Supp. Tr. p. 12:10-23. Officer Smith did not observe any blood or other signs of potential injury when searching the car. Supp. Tr. p. 13:20-25. Nor had he been advised of any calls for medical aid or other assistance. Supp. Tr. p. 15:9-20. Furthermore, at the time he stopped the van, Officer Smith

was not even aware if the person involved in the accident was inside the van. Supp. Tr. p. 14:10-12; 16:18-24. Given the facts of this case, the intrusion of the privacy interest far exceeded the public need to seize the van and its occupants.

II. The Warrantless Seizure of the Vehicle Which Defendant Was an Occupant and Subsequent Search of Defendant Violated Article I, Section 8 to the Iowa Constitution.

Preservation of Error: Mr. Smith preserved error by timely filing a Motion to Suppress Evidence and Motion to Reconsider and Request for Expanded Findings of Fact and Conclusions of Law, obtaining rulings on the same, and timely filing his Notice of Appeal.

Standard of Review: Mr. Smith alleges a violation of his constitutional rights under Article I, section 8 of the Iowa Constitution. As such, the court's review is de novo.

Argument: Article 1, Section 8 of the Iowa Constitution provides greater protection to Mr. Smith. Iowa courts cannot interpret the Iowa Constitution to provide less protection than that provided by the United States Constitution; however, the court is free to interpret our constitution as providing greater protection for our citizens' constitutional rights. *State v. Cline*, 617 N.W.2d 277, 285 (Iowa 2000). While "we strive to be consistent with federal constitutional law in our interpretation of the Iowa Constitution, we jealously guard our right and duty to differ in appropriate cases." *Id.* "[O]ur court would abdicate its

constitutional role in state government were it to blindly follow federal precedent on an issue of state constitutional law." *Id.*

In *State v. Ochoa*, the Court specifically rejected the application of a "lockstep" approach to interpretation of state constitutional provisions that the court adopted in prior opinions. *State v. Ochoa*, 792 N.W.2d 260, 267 (Iowa 2010). "[R]ecently…we have tended to emphasize independence from the federal model." *Id.* "[I]nterpretations of state constitutional law should be consistent with federal law when possible, but we have emphasized that 'if precedent is to have any value it must be based on a convincing rationale.'" *Id.* (quoting *State v. James*, 393 N.W.2d 465, 472 (Iowa 1986) (Lavorato, J., dissenting)). "[W]e now hold that, while United States Supreme Court cases are entitled to respectful consideration, we will engage in independent analysis of the content of our state search and seizure provisions." *Id.* The holding of *Ochoa* specifically denounces the practice of blindly applying the rationale from federal search and seizure decisions without engaging in an independent analysis of the issue under corresponding search and seizure provisions of the Iowa Constitution.

Previous Iowa cases involving searches made pursuant to the "community caretaking" doctrine have previously been challenged on both federal and state constitutional grounds. *See e.g. State v. Garrison*, 791 N.W.2d 428, 2010 WL 3661815 at *1 (Iowa App) (unpublished). The Iowa Supreme Court, however, has

never analyzed the "community caretaking" doctrine squarely under Article I, section 8 of the Iowa Constitution because it has not been argued that the analysis of the State Constitution should differ from that of the U.S. Constitution. *See Id.*, citing *State v. Hoskins*, 711 N.W.2d 720, 725 (Iowa 2006).

The Iowa Supreme Court has had a strong record of providing more protections to Iowans through the Iowa Constitution than those provided through the United States Constitution. This is especially true in the Iowa Supreme Court's search and seizure jurisprudence. For example, in *Ochoa*, the Court stated that "our search and seizure case law historically has reflected considerable solicitude to the sanctity of the home." *State v. Ochoa*, 792 N.W.2d at 284. "We have generally maintained that a "search warrant issued by a neutral magistrate is required before a private residence may be searched unless a valid consent to the search and entry ... has been given to the police." *Id.* at 285, citing *State v. Jones*, 274 N.W.2d 273, 275 (Iowa 1979). "We have repeatedly stated that warrantless searches and seizures that did not fall within one of the 'jealously and carefully drawn exceptions' are unreasonable." *Id.*, citing *State v. Strong*, 493 N.W.2d 834, 836 (Iowa 1992); *State v. Sanders*, 312 N.W.2d 534, 538 (Iowa 1981). "[Our previous] cases, however, were no doubt influenced by prevailing jurisprudence of the United States Supreme Court, which has now generally tended to move away from the warrant and probable cause requirement in many contexts." *Id.*

In the search and seizure area, the Iowa Supreme Court decided an important case on independent state grounds in *State v. Cline*, 617 N.W.2d, at 278. The Court declined to follow the lead of the United States Supreme Court by rejecting a good faith exception to the exclusionary rule in search and seizure cases under article I, section 8 of the Iowa Constitution. *See State v. Cline*, 617 N.W.2d at 292–93. "In *Cline*, we noted that the recent cases of the United States Supreme Court tended to undermine the exclusionary rule, but we declined to adopt that approach." *State v. Ochoa*, 792 N.W.2d at 285, citing *State v. Cline*, 617 N.W.2d at 284, 292–93. The Court found that the reasoning of the United States Supreme Court was insufficient to justify a similar approach under the Iowa Constitution. *State v. Cline*, 617 N.W.2d at 288–92.

The Court has also expanded search and seizure protections in its decision in *State v. Cullison*, 173 N.W.2d 533 (Iowa 1970). In *Cullison*, the Court specifically rejected the notion that a person's search and seizure protections are stripped or diluted by virtue of their status as a parolee. *Id.* at 537. Similarly, the Court in *Ochoa* found that warrantless, suspicionless searches of a parolee's motel room violated Article I, section 8 of the Iowa Constitution. *See State v. Ochoa*, 792 N.W.2d at 292.

These decisions demonstrate the sanctity of search and seizure protections under the Iowa Constitution, above and beyond what the United States Supreme

Court has determined that the federal Constitution provides. In following this line of cases, the Court should declare that the stop and seizure in the instant case was unjustified under Article I, section 8 of the Iowa Constitution or any of its exceptions, including the community caretaking exception, even if the Court finds that the search did not violate the Fourth Amendment of the United States Constitution.

The community caretaking exception is ripe for possible abuse by law enforcement and must be properly limited to prevent that possibility. Allowing the exception to apply to the facts of this case would open the door for such abuse to continue to occur. Other states have correctly concluded that allowing an expansive approach to the community caretaking doctrine poses potential danger to the Fourth Amendment and parallel provisions of their state constitutions. The Appellate Court of Illinois in *City of Highland Park v. Lee*, 683 N.E.2d 962, 967 (Ill. App. Ct. 1997) found that when a seizure occurs, an officer is no longer acting in his community caretaker function, even if his original intention had nothing to do with the detection or investigation of a crime. *Id.* There is no need to seize a person in order to render assistance if a caretaking function truly exists. *See Id.*

The Utah Court of Appeals has limited the community caretaking exception to only those situations where there is an objective determination that a life is in imminent danger. *Provo City v. Warden*, 844 P.2d 360, 364-65 (Utah App. 1992).

The Court noted that this was the best means of "encouraging genuine police caretaking functions while deterring bogus or pretextual police activities." *Id*. at 365.

The Appeals Court of Massachusetts came to a similar conclusion, noting that the potential for abuse in the "public servant" function of the community caretaking exception is ripe. *See Comm. v. Canavan*, 667 N.E.2d 264, 267 (Mass. 1996). The Court stated that "'[t]he policy of the Fourth Amendment is to minimize governmental confrontations with the individual,' and this is not promoted by permitting the police to stop nonoffending citizens." *Id*., citing *U.S. v. Dunbar*, 470 F.Supp 704, 707 (D. Conn 1979). "The risk of abuse [of the exception] is real." *Id*. The court noted that, in a situation where a motorist may have needed assistance because they were lost, for example, the governmental interest would have been as well served if the officer had "merely ma[de] his presence known and offer[ed] help if needed." *Id*. at 268.

Even though Iowa caselaw does not permit pretextual stops when the justification for a seizure is the community caretaking exception, *see State v. Nikolsky*, 2004 WL 151070 at *6, determining pretext is practically impossible. The Iowa Supreme Court has even noted that an "officer's thinking processes shed little light on the reasonableness of the intrusion." *State v. Carlson*, 548 N.W.2d at 141; see also Jason S. Marks, *Taking Stock of the Inventory Search: Has the*

Exception Swallowed the Rule?, 10 Crim. Justice 11, 12 (1995) (noting that community caretaking searches can be used to hide investigatory searches and that proving pretext is extremely difficult); Edwin J. Butterfoss, *Bright Line Seizures: The Need for Clarity in Determining When Fourth Amendment Activity Begins*, 79 J. Crim. L. & Criminology 437, 471 n. 80 (1988) (recognizing the danger that police could use the community caretaking exception as a pretext for investigatory encounters). Limiting the exception to those cases where an emergency exists or aid clearly is required effectively eliminates the need to determine whether the seizure was pretextual and limits the potential for abuse by law enforcement.

Many courts have also correctly prevented officers from transforming caretaking encounters into unjustified subsequent investigatory searches. *See State v. Bernier*, 1995 WL 785837 at *4 (Conn. Super. Ct. 1995) (prohibiting the examination of crime scene once emergency situation ends), aff'd, 700 A.2d 680 (Conn. App. Ct. 1997), cert. granted in part on other grounds, 701 A.2d 659 (Conn. 1997), rev'd on other grounds, 717 A.2d 652 (Conn. 1998); *City of Troy v. Ohlinger*, 475 N.W.2d 54, 58 (Mich. 1991) (limiting search to emergency's scope); *State v. Gray*, 1997 WL 537861 at *3 (Wash. Ct. App. 1997) (unpublished) (finding a search illegitimate after safety reasons cease to exist); *State v. Angelos*, 936 P.2d 52, 55 (Wash. Ct. App. 1997) (limiting search to the scope of the

emergency). The community caretaking exception does not apply to the instant case because there was no "emergency situation."

The Court should follow the wisdom of other jurisdictions limiting the application of the community caretaking doctrine to those cases where emergency aid or assistance is clearly needed or alternatively applying the exclusionary rule to those cases where evidence of criminal activity is gathered as a result of a community caretaking seizure. This is the best way to "encourage genuine police caretaking functions while deterring bogus or pretextual police activities." *Provo City v. Warden*, 844 P.2d at 365.

No such clear emergency or situation requiring aid presented itself here. The bottom line is that the officer had no reasonable suspicion of criminal activity to stop the vehicle and there was no emergency that would require the officer to administer aid to the vehicle's occupants. No governmental interest was served by the officer seizing Mr. Smith. The officer could have "made his presence known and offered assistance if needed." *See Comm. v. Canavan*, 667 N.E.2d at 267. As such, the District Associate Court's denial of Defendant's motion to suppress should be overruled, and all evidence resulting from the warrantless seizure under Article I, section 8 of the Iowa Constitution must be suppressed.

Conclusion

For the reasons set forth above, Appellant respectfully requests that this Court reverse the District Associate Court's order denying Mr. Smith's motion to suppress evidence and remand for further proceedings.

Request for Oral Argument

Request is hereby made that, upon submission of this case, counsel for Appellant requests to be heard in oral argument.

Certificate of Compliance with Type-Volume Limitations, Typeface Requirements, and Type-Style Requirements.

1. This brief complies with the type-volume limitations of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 6,747 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1)

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

Scott A. Michels — September 13, 2017
Date

Attorney's Cost Certificate

I, Scott A. Michels, attorney for the Appellant, hereby certifies that the actual cost of reproducing the necessary copies of this Brief was $0.00, and that amount has been paid in full by me.

Respectfully Submitted,

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