ELECTRONICALLY FILED SEP 13, 2017 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 17-0317

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CODY TYLER SMITH,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT
OF CLARKE COUNTY
THE HONORABLE MONTY W. FRANKLIN

APPELLANT'S FINAL REPLY BRIEF

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CERTIFICATE OF FILING

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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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. No Specific, Objective Facts Set Forth By The Officer Justify The Stop Of The Van That Mr. Smith Was Occupying.

Legal Authority

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II. Stops Pursuant To The Community Caretaking Function Should Be Narrowly Tailored Under Article I, Section 8, Of The Iowa Constitution.

Legal Authority

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State v. Gaskins, 866 N.W.2d 1 (Iowa 2015)
State v. Kurth, 813 N.W.2d 270 (Iowa 2012)
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Legal Argument

I. No Specific, Objective Facts Set Forth By The Officer Justify The Stop Of The Van That Mr. Smith Was Occupying.

The State argues that the seizure of Mr. Smith and the in which van he was riding are justified by the community caretaking exception to the warrant clause. "Where the standard is probable cause, a search or seizure of a person must be supported by probable cause *particularized with respect to that person*." *State v. Gogg*, 561 N.W.2d 360, 368 (Iowa 1997), quoting *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979). (emphasis added.) This individualization of suspicion is likewise applicable when the analysis is being conducted under the reasonable suspicion standard. *Brown v. Texas*, 443 U.S. 47, 51 (1979). "We have required the officers to have a reasonable suspicion, based on objective facts, that *the individual* [to be seized] is involved in criminal activity." *Id.* (emphasis added). "[T]he Fourth Amendment requires that a seizure must be based on specific, objective facts indicating that society's legitimate interests require the seizure of the particular individual…" *Id.* There is no dispute that Mr. Smith, and the van he was riding in were seized. Therefore, the officer must point to specific, objective facts that *this van or one of its known occupants* either required emergency aid or was in need of some other assistance.

Officers responded to a call for a vehicle in the ditch. Supp. Tr. 12:4-9. While at the scene, the officer observed a van drive by. Supp. Tr. 9:6-8. The van drove past the accident site, where law enforcement was clearly visible, and proceeded down the road and pulled into the driveway of a residence. Supp. Tr. 9:6-8; 15:21-23. The van left the residence and drove down the road. Supp. Tr. 9:6-10. The officer ran the van's license plate and determined that while registered to different persons, both the van and the car in the ditch were registered to the same address. Supp. Tr. 9:6-22. Upon learning the vehicles were registered to the same address, the officer activated his lights and seized the van. Supp. Tr. 9:6-13. The officer did not articulate having any knowledge as to who was operating the vehicle. There is no evidence that the operator of the van matched the description of the individual whose license was found in the car. There is no evidence that the sole known occupant of the van was injured, or in need of assistance. The only evidence available to the officer at the time of the stop was that the two vehicles were registered to different individuals at the same address. Supp. Tr. 9:14-22.

The State first attempts to argue that these facts support the conclusion that Mr. Smith was inside the vehicle and seizing the vehicle was required under the emergency aid doctrine. The State also attempts to argue

that the seizure was justified under the public servant function, because the officer was trying to help the van locate Mr. Smith. These two rationales oppose each other. If Mr. Smith was inside the van, no assistance was needed to locate him. Likewise, if the van needed help locating Mr. Smith, the van is not in need of emergency aid.

The problem here is that there are no specific, objective facts to support the stop of the van. The officer did not observe the van commit any traffic violations, the van appeared to be in proper working order, there was no damage to the van, and had no reason to believe that the van was involved in any criminal activity. Supp. Tr. 16:8-18:9. As far as the officer was aware, the driver was the lone occupant of the van. Supp. Tr. 16:18-21. The officer was only aware the van and the car were registered to different individuals at the same address. Supp. Tr. 9:14-22. He had no idea who was actually operating the vehicle, or for what purpose the van was in that location. While the officer believed it was suspicious that this van was in that area at that time of night, he failed to articulate of what he was suspicious. Supp. Tr. 17:9-10. There are no objectively discernable facts to support the stop of *this van* or *the driver of this van*.

A. The officer lacked specific, objective facts to support the conclusion that Mr. Smith was inside the van and in need of emergency medical assistance.

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. *State v. Carlson*, 548 N.W.2d 138, 141-42 (Iowa 1996). "Under the emergency aid doctrine, the officer has an *immediate, reasonable belief* that a serious, dangerous event is occurring…" *State v. Crawford*, 659 N.W.2d 537, 542, (Iowa 2003), citing Mary E. Neumann, *The Community Caretaker Doctrine: Yet Another Fourth Amendment Exception*, Am. J. Crim L. 325, 333-34 (1999). (emphasis added). The State essentially argues that any time a vehicle is involved in an accident there is a possibility of injury; therefore, the emergency aid doctrine applies to all who may be near the scene.

Again, no evidence was available to the officer prior to the stop that any occupant of the van was an occupant of the vehicle discovered in the ditch. In this case, the officer was aware there was a vehicle in the ditch, and that the driver had been seen walking away from the scene. Supp. Tr. 12:4-9; 14-16. Law enforcement was not provided with any information that the driver was visibly injured, or having trouble walking. Supp. Tr. 12:10-13; 17-23. Officers were not made aware of any calls seeking medical

assistance. Supp. Tr. 15:9-20. When law enforcement searched the vehicle, no blood or other signs of possible injury were observed. Supp. Tr. 13:20-25. While at the scene, the officer observed a van drive by. Supp. Tr. 9:6-8. The van drove past the accident site, where law enforcement was clearly visible, and proceeded down the road and pulled into the driveway of a residence. Supp. Tr. 9:6-8; 15:21-23. Officers did not observe anyone enter the vehicle while it was at the residence. Supp. Tr. 14:10-12. The van left the residence and drove down the road. Supp. Tr. 9:6-10. The officer ran the van's license plate and determined that both the van and the car in the ditch were registered to different persons at the same address. Supp. Tr. 9:6-22.

Despite law enforcement's concession that only one person was observed in the van, nobody was seen entering the van at the residence, and it was unknown who was operating the van, the State persists in arguing that it was reasonable to assume that Mr. Smith had been picked up and was traveling in the van, and officers needed to check to see if Mr. Smith needed medical attention. There are four problems with this argument. First, at the time the van was stopped, the officer had no idea if Mr. Smith was in the van. The officer only observed the driver, he could see no passengers. Supp. Tr. 16:18-21. Additionally, nobody was seen entering the van when it

stopped at the residence. Supp. Tr. 14:10-12. There are no specific, objective facts that led him to believe that Mr. Smith was even inside that vehicle, let alone that Mr. Smith was injured and in need of aid. With no reason to believe that Mr. Smith was in the vehicle, there can be no reasonable belief that anyone in the van was in need of emergency assistance.

The second problem with the State's argument is the officer's own testimony regarding his reasoning for the stop. The officer testified, "At the time I followed it and I stopped the vehicle and checked the welfare of the people *to see if it was involved in the accident*." Supp. Tr. 9:11-13 (emphasis added). The officer stated he was checking to see if *the van* was involved in the accident. The officer had no facts to justify a belief that the van had been involved in the accident because he observed no damage to the van and it was in proper working order. Supp. Tr. 16:12-17. Again, there are no specific, objective facts to lead a reasonable officer to believe that the van had been involved in an accident and was in need of assistance.

The third problem with the State's argument is that it is premised on assumptions. The stopping officer must have specific and articulable facts to support a stop, *mere suspicion, curiosity or hunch is insufficient*. *State v. Tague*, 676 N.W.2d 197, 204 (Iowa 2004). (emphasis added). If we are to

travel down the road of assumptions, or if the Court finds that there were specific and objective facts to support the conclusions drawn by the State - that it was reasonable for the officer to believe that Mr. Smith was in the van and could have been injured - there are other reasonable conclusions that should be drawn.

For example, if it was reasonable to believe that the van was in this area looking for Mr. Smith, it would also be reasonable to presume that this person had been contacted to let them know where Mr. Smith was. No evidence exists that the driver of the van had psychic abilities to determine Mr. Smith's location. The only way the van would know where Mr. Smith had gone in the ditch and where to find him, was for someone to have advised the driver of the van.

Next, if it is reasonable to presume that the driver of the van was contacted to pick up Mr. Smith, it is also reasonable to presume that if Mr. Smith needed assistance, medical or otherwise, he had the ability to seek such assistance. The officer testified that he was not made aware of any calls seeking medical assistance. Supp. Tr. 15:9-20. The fact that the officers were not advised of any calls for medical attention further creates the presumption that no medical attention was needed.

Lastly, if it was reasonable to believe that Mr. Smith had been picked up by the van, it is also reasonable to believe that the driver of the van could have sought medical attention for Mr. Smith, or located one of the officers in the area for medical attention. Again, because the driver of the van did not contact anyone for medical assistance, and did try to get the attention of the officers, it is reasonable to presume that no medical attention was needed.

The final problem with the State's argument is there are also no specific facts that lead to the conclusion that Mr. Smith was indeed injured. No blood or other obvious signs of injury were located in the vehicle, nor did the caller did not state that the person walking appeared to have been injured or having trouble walking. Supp. Tr. 13:20-25. While the State correctly points out that a person could be seriously injured without blood or other visible clues being observed in a vehicle (i.e. head injuries or internal bleeding), there are thousands of accidents that occur every day that do not result in serious injury. The State also correctly points out that the injured person may not realize the injury or its severity. However, there is no evidence that the officer involved in this case was trained to diagnose either a head injury or internal bleeding, nor is there any evidence in the record that the officer either checked Mr. Smith's medical condition himself or sought medical attention for Mr. Smith. Assuming Mr. Smith would have sustained

such injuries, the lack of examination caused them to go undetected, despite law enforcement intervention. In fact, the entire argument that the stop of the vehicle was to check on the medical state of the driver of the vehicle in the ditch is belied by the fact that no evidence in the record exists to show that any medical treatment was ever sought for Mr. Smith, or even if he was asked if he needed medical treatment.

Under similar circumstances, the Wisconsin Court of Appeals held that the community caretaker function did not justify the warrantless entry into a home to check the welfare of a driver involved in an accident. *State v. Ultsch*, 793 N.W.2d 505 (Wis. 2010). Officers were dispatched to an accident involving a vehicle that had crashed into a brick building. *Id.* at 506-07. The vehicle had left the scene and was discovered, damaged, at the beginning of a long driveway to a private residence. *Id.* at 507. The owner of the home drove down the driveway to the officers and advised that the damaged vehicle was driven by his girlfriend who was in the residence asleep, then left. *Id.* Officers entered the residence after getting no response when they knocked and announced their presence. *Id.* Holding that the community caretaker function did not apply, the Court noted that officers did not observe any serious damage to the vehicle, blood, or any other indication of injury. *Id.* at 509. The Court further noted that officers were

never made aware that the driver was in need of assistance, even from her boyfriend. *Id.* at 509-10.

There are no reasonable and articulable facts to support the conclusion that Mr. Smith was even in the van prior to it being stopped. Furthermore, there are no specific objective facts to support the belief that Mr. Smith needed law enforcement to aid him in obtaining emergency medical care. As such, no facts exist to justify the stop of this van on the basis that emergency aid was required.

B. The Officer Lacked Specific, Objective Facts To Support The Conclusion That The Driver Of The Van Needed Assistance In Locating Mr. Smith.

If emergency aid does not apply, the State also contends that the stop of the van was supported by the public servant doctrine. 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). The state contends that the officer "made a reasonable assumption that the van was trying to locate Smith but may be having difficulty in doing so…." Appellee's Brief, p.20. Again, the State is not supporting this assumption

with any specific objective facts. This is merely suspicion or a hunch, or quite possibly this officer did have psychic abilities.

The facts known to the officer at the time of the stop do not support the conclusion that the driver of the van needed aid in finding Mr. Smith. To begin, the officer had no idea who was driving the van. The van drove past the scene of the accident and did not stop to see if Mr. Smith was still at that location. Supp. Tr. 9:6-8. The van drove past the officer, who was at the scene of the accident in a marked patrol vehicle, and did not stop to ask if he knew where Mr. Smith could be located, or to ask for help in locating Mr. Smith. Supp. Tr. 15:21-23. The van continued east and pulled into a driveway, then pulled out of the driveway and continued traveling away from the scene of the accident. Supp. Tr. 9:6-10. The van did not head back to the accident site to look for the officer, nor did the driver of the van pull over or try to get the officer's attention prior to being seized.

The facts of this case do not support the conclusion that the driver of the van needed help locating Mr. Smith. The facts of this case demonstrate the converse, that the driver of the van was not seeking help from law enforcement. It completely defies logic and common sense to believe that the driver of the van needed help finding Mr. Smith, when he drove right past a marked squad car and didn't stop to seek assistance. The officer had

nothing more than a mere hunch that the van needed assistance finding Mr. Smith, making this case no different than those cases where the officer had a hunch that the driver appeared to be lost and in need of directions. *See State v. Casey*, No. 09-0979, 2010 WL 2090858 (Iowa App.) (community caretaking exception didn't apply to officer's seizure of motorist who appeared to be lost); *see also U.S. v. Dunbar*, 470 F.Supp. 704, 706-08 (D.Conn. 1979); *Poe v. Commonwealth*, 169 S.W.3d 54, 58-59 (Ky.Ct.App. 2005); *Commonwealth v. Canavan*, 667 N.E.2d 264 (Mass.App.Ct. 1996). As such, the specific objective facts do not support the stop of the van pursuant to the public servant function.

C. The Public Need And Interest Does Not Outweigh The Intrusion Upon The Privacy Of Mr. Smith.

Assuming *arguendo* that three was a bona fide community caretaking function, the public need and interest do not outweigh the constitutional right to be free from unreasonable searches and seizures under these facts. Actions pursuant to the community caretaking doctrine "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 270, 278 (Iowa 2012) *quoting State v. Carlson*, 548 N.W.2d at 142). If the intrusion upon the

citizen is not outweighed by the public need, then the stop cannot be valid.

Id. at 279.

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).

In this case, the officer was not made aware by dispatch of any injury to the individual observed walking from the accident, he had observed no signs of blood or other indicia of injury at the scene of the accident, nor was he advised of any calls for medical services in the area. Supp. Tr. 12:10-23; 13:20-25; 15:9-20. Assuming the officer had some sort of reasonable belief that Mr. Smith was inside the van, he was with someone else who could get him medical assistance if that was needed. Due to the fact that Mr. Smith was with someone who could get him emergency aid if needed, the danger he presented to himself or others was minimal at best. As such, the factors

do not support a conclusion that the minimal government interest at this point outweighed Mr. Smith's privacy interest.

Furthermore, there were certainly less restrictive means other than seizing the van available to the officer. The officer in this case could have merely contacted dispatch to call the registered owner of the wrecked vehicle to determine if they were aware the vehicle was in the ditch and whether anyone was in need of medical assistance. Additionally, given that there were multiple officers in the area responding to the call, another officer could have parked along the road ahead of the van and made himself available for the van to stop and seek assistance if it was needed.

II. Stops Pursuant To The Community Caretaking Function Should Be Narrowly Tailored Under Article I, Section 8, Of The Iowa Constitution.

The Iowa Supreme Court has a strong history of providing more protections to Iowans through the Iowa Constitution than those provided by the United States Constitution. *See State v. Ochoa*, 792 N.W.2d 260 (Iowa 2010) (warrantless search of parolee's motel room violated Iowa Constitution); *State v. Cline*, 617 N.W.2d 277 (Iowa 2000) (good faith exception to exclusionary rule does not apply under Iowa Constitution); *State v. Gaskins*, 866 N.W.2d 1 (Iowa 2015) (warrantless search of a safe in a vehicle was not a valid search incident to arrest under Iowa Constitution);

State v. Pettijohn, 899 N.W.2d 1 (Iowa 2017) (warrantless breath test administered under boating while intoxicated implied consent violated Iowa Constitution). Many of these opinions are contrary to what other jurisdictions have decided.

Mr. Smith's first argument is that the Court should rule that Article I, section 8 of the Iowa Constitution prohibits seizures conducted under the public servant function of the community caretaking exception. Limiting seizures under the community caretaking exception to emergency aid will limit the risk of abuse by law enforcement. The community caretaking doctrine has been described as "an amorphous doctrine" with "little basis for principled decision making and a substantial risk that the exception may engulf search and seizure law." *See State v. Kurth*, 813 N.W.2d at 282 (Appel, J., concurring specially). Part of the reason for the abuse of this doctrine is the "policeman, as a jack-of-all-emergencies, has 'complex and multiple tasks to perform in addition to identifying and apprehending persons committing serious criminal offenses;' by default or design he is also expected to 'aid individuals who are in danger of physical harm,' 'assist those who cannot care for themselves,' and 'provide other services on an emergency basis.'" *Wagner v. Hedrick*, 383 S.E.2d 286, 293 (W.Va. 1989), quoting 2 LaFave, *Search and Seizure: A Treatise on the Fourth*

Amendment, § 5.4(c) at 525 (2d ed. 1987). While the "life or limb" rule set forth in *Provo City v. Warden*, 844 P.2d 360, 364-65 (Utah App. 1992) was overturned by a subsequent Utah Supreme Court decision, the Iowa Supreme Court is not bound by such a decision and can freely grant more protections under the Iowa Constitution. The Supreme Court of New Jersey has limited entry into a private residence under the community caretaking function to those situations that involve the loss of life or limb. *State v. Vargas*, 63 A.3d 175, 191 (N.J. 2013). Limiting seizures pursuant to community caretaking to solely emergency situation creating an immediate and substantial risk to life or limb protects against the risk of abuse to Iowan's right to be free from unreasonable search and seizure, and protects against pretextual stops.

The State argues that Mr. Smith lacks standing to pursue this argument if it is determined that there was no reasonable belief that Mr. Smith was injured, because the argument is moot. However, as the State contends, the seizure of Mr. Smith would be valid if it is determined that the officer was justified in his belief that the driver of the van need help in locating Mr. Smith. As such, this argument is not moot unless this Court determines that neither the emergency aid nor public servant doctrines apply under the federal standard.

Secondly, Appellant argues that the exclusionary rule should apply to evidence seized that is unrelated to the community caretaking purpose, whether it be pursuant to emergency aid or public servant. The Washington Court of Appeals has held that "[a]s long as a community caretaking function is not pretext to investigate a crime, it is a valid exception to the warrant requirement. However, as soon as the lawful justification for conducting such a search [or seizure] ceases the warrantless search [or seizure] must also cease." *State v. Gray*, 1997 WL 537861 at *1 (Wash. Ct. App. 1997) (unpublished); *see also State v. Loewen*, 647 P.2d 489, 493-94 (Wash. 1982). Other jurisdictions have similarly held that once the officer is assured that the citizen is not in peril, the peril has mitigated, or they no longer needs assistance, the caretaking function ceases and any further detention or search is unreasonable. *Williams v. State*, 962 A.2d 210, 219 (Del. 2008); *see also State v. Lovegren*, 51 P.3d 471, 475-76 (Mont. 2002). Applying the exclusionary rule would also protect against the abuse of the community caretaking doctrine and the risk of pretextual seizures.

As addressed, *supra*, there existed no clear emergency in this case. Limiting seizures conducted pursuant to community caretaking to emergency situations where life or limb is at risk would invalidate the seizure of Mr. Smith. Additionally, should the Court apply the exclusionary

rule to evidence discovered outside the scope of the caretaking function, once the officer determined that Mr. Smith had already been located, or that he was not in need of medical assistance, all evidence subsequent to that would be inadmissible.

Conclusion

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

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 4,127 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.

_____________________________ September 13, 2017
Scott A. Michels Date

Attorney's Cost Certificate

I, Scott Michels, attorney for the Appellant, hereby certifies that the actual cost of reproducing the necessary copies of this Brief was $0.

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