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 APPLICATION FOR FURTHER REVIEW OF IOWA COURT OF APPEALS DECISION ENTERED DECEMBER 20, 2017 AND REQUEST FOR ORAL ARGUMENT

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QUESTION PRESENTED FOR REVIEW

I. WHETHER THE SPARING APPLICATION OF THE COMMUNITY CARETAKING EXCEPTION MAY BE EXPANDED TO JUSTIFY SEIZURES OF PERSONS ABSENT COMPELLING CIRCUMSTANCES NECESSITATING IMMEDIATE ACTION.

II. WHETHER THE PROTECTIONS GRANTED UNDER ARTICLE I, SECTION 8 OF THE IOWA CONSTITUTION SHOULD BE EXPANDED TO LIMIT SEIZURES OF PERSONS UNDER THE COMMUNITY CARETAKING EXCEPTION TO ONLY THOSE THAT INVOLVE IMMEDIATE RISK OF LIFE AND LIMB.

III. WHETHER THE PROTECTIONS GRANTED UNDER ARTICLE I, SECTION 8 OF THE IOWA CONSTITUTION SHOULD BE EXPANDED TO APPLY THE EXCLUSIONARY RULE TO EVIDENCE OBTAINED AFTER THE PURPOSE OF THE COMMUNITY CARETAKING FUNCTION HAS BEEN SATISFIED.

CERTIFICATE OF FILING

I, Scott A. Michels, hereby certify that I filed the attached Brief with the Clerk of the Supreme Court, Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa, on January 9, 2018, via the Iowa Electronic Document Management System.

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CERTIFICATE OF SERVICE

I, Scott A. Michels, hereby certify that on January 9, 2018, I served a copy of the attached brief on all other parties to this appeal by filing a copy of this brief with Iowa EDMS: Iowa Attorney General, Criminal Appeals Division, Hoover State Office Building, 2nd Floor, Des Moines, Iowa 50319.

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STATEMENT SUPPORTING FURTHER REVIEW

Appellant specifically requests further review to answer the question of whether the sparing application of the community caretaker exception allows a peace officer to justify seizures of persons absent compelling circumstances necessitating immediate action. "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 (unpublished), citing *State v. Rinehart*, 617 N.W.2d 842, 844 (S.D.2000) (internal citations omitted); see also Jason S. Marks, *Taking Stock of the Inventory Search: Has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). "[I]t 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). The Court of

Appeals decision expands this narrowly applied exception to justify the seizure of the occupants of a vehicle that is travelling in the vicinity of an automobile accident, in which there were no visible signs of injury to the occupants, nor was aid sought by the occupants of the vehicle, nor were there any facts to support the assumption that the occupants of the van required assistance.

The Court of Appeals decision needs to be revisited by the Iowa Supreme Court for multiple reasons. First, the present decision is contrary to the holding in *State v. Carlson*, 548 N.W.2d 138, 140 (Iowa 1996). The Court of Appeals failed to objectively analyze all of the circumstances available to the officer. The Court of Appeals completely disregarded the fact that the officer had no reason to believe Appellant was inside the vehicle he seized. The Court of Appeals also disregarded that the van drove right past the officer's marked patrol vehicle at the scene of the accident without stopping to see what occurred or to seek assistance. "Under the emergency aid doctrine, the officer has an immediate, reasonable belief that a serious, dangerous event is occurring…" such as "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). 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. *Id.* The Court of Appeals decision significantly expands what should be a narrow application of the exception and opens the door for pretextual stops.

Secondly, this Court should take this opportunity to determine whether the Iowa Constitution provides greater protections to the public than the United States Constitution, specifically, regarding applying the exclusionary rule to evidence obtained after the purpose of the community caretaking function has been accomplished and limiting seizures pursuant to community caretaking to emergency situations involving immediate risk of life and limb. The Iowa Court of Appeals stated a strong argument had been made to interpret the Iowa Constitution more strictly, but declined to do so as it is the province of this Court.

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). 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). Both proposed remedies, especially application of the exclusionary rule, will significantly reduce the risk of pretextual stops, because it is less likely an officer will intrude on a person's liberty if they know the evidence seized is inadmissible.

Lastly, the Court of Appeals erred in concluding that the public need and interest outweighed the defendant's privacy interest.

APPELLANT'S BRIEF

Course of Proceedings

A Trial Information was filed on May 12, 2016, charging Appellant 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 and pronounced sentence; however, the Court did not issue the sentencing order until March 3, 2017. 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 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 appellant, 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.

Legal Argument

I. The Warrantless Seizure of the Vehicle in Which Appellant 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, timely filing his Notice of Appeal, and filing this Application for Further Review.

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. *State v. Naujoks*, 637 N.W.2d 101, 106 (Iowa 2001).

Argument: Subject to a few carefully drawn exceptions, warrantless searches are per se unreasonable. *State v. Carlson*, 548 N.W.2d at 140. 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.*

A. Community Caretaking Framework.

One recognized, but often criticized, exception to the warrant requirement is the "community caretaking" exception which was first developed in *Cady v. Dombrowski*, 413 U.S. 433, 441, 93 S.Ct. 2523, 2528, 37 L.Ed. 706, 718 (1973). "As 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.'" *Id.* However, there are limits under the community caretaking function and "[a] person's Fourth Amendment rights are not eviscerated simply because a police officer may be acting in a non-investigatory capacity." *U.S. v. King*, 990 F.2d 1552, 1560 (10th Cir. 1993), *citing U.S. v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975). The United States Supreme 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. *Cady v. Dombrowski*, 413 U.S. at 448. For this reason "[t]he '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 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.

The Court of Appeals concluded that a seizure occurred and that the impound inventory doctrine did not apply, therefore, this brief will not address those issues and will focus on the lack of applicability of the public servant and emergency aid doctrines and the privacy intrusion outweighing the public interest.

i. The Circumstances Confronting the Officer Did Not Justify a Seizure Under the Emergency Aid Doctrine as a Community Caretaker Activity.

"Under the emergency aid doctrine, the officer has an *immediate, reasonable belief that a serious, dangerous event is occurring*…" such as "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). (Emphasis added).

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, based upon specific facts, that a reasonable person under the circumstances would have believed an emergency existed. *Id.* at 141-42.

The officer testified he stopped the vehicle to check the welfare of the person involved in the accident. Supp. Tr. p. 11:6-9. However, the facts known to the officer do not support a reasonable belief that the person involved in the accident was even inside the van, let alone have an *immediate reasonable belief that a serious, dangerous event was occurring*. Officers were dispatched to a single car in a ditch accident. Supp. Tr. p. 8:15-18. Officers were advised that a person was seen walking away from the accident. Supp. Tr. p. 8:24-9:5. Officers were not informed that the person leaving the accident appeared to be injured in any manner, nor was the person 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. There had been no calls seeking assistance, medical or otherwise. Supp. Tr. p. 15:9-20. While at the scene, the officer observed a van drive 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. Nobody was observed entering or exiting the van, and the van left the residence and drove down the road. Supp. Tr. 9:6-10; 14:10-12. At the time the officer activated his emergency lights, he believed the driver was the sole occupant of the vehicle. Supp. Tr. 16:18-21.

The facts available to the officer did not support a reasonable conclusion that anyone other than the driver was inside the vehicle. If there is no reasonable belief that the person involved in the accident is inside the vehicle, there is no reasonable basis to believe that the van required immediate emergency assistance.

The Court of Appeals stated that the officers reasonably could have inferred a familial relationship between the driver of the vehicle in the ditch, the owner of the vehicle in the ditch, and the van driver, because the vehicle in the ditch was registered to Noreen Smith, the van was registered to Steven Smith, Cody Smith's license was found in the vehicle in the ditch and both vehicles were registered to the same address. *State v. Smith*, No. 17-0317 *7

(Iowa App., December 20, 2017). While this may be a rational inference, the Court of Appeals made a huge leap to conclude that Appellant was inside the van and in need of medical attention.

If it was reasonable to believe that the driver of the van was a family member and was in this area looking for Mr. Smith, it is also reasonable to infer that this person had been contacted either by Appellant or someone who knew where he was. The only way the driver of the van would know that Mr. Smith had been in an accident, where the accident occurred, and where to find him, was for someone to have advised him.

Next, because it is reasonable to infer that the driver of the van was contacted to pick up Mr. Smith, it is also reasonable to infer that if Mr. Smith needed assistance, medical or otherwise, he had the ability to seek such assistance; yet there were no calls for assistance. The fact that the officers were not advised of any calls for medical attention further creates the presumption that none was needed.

Furthermore, if it was reasonable to believe that Mr. Smith had been picked up by the van, despite the lack of evidence indicating he was, it is also reasonable to infer that the driver of the van could have sought medical attention for Mr. Smith. Alternatively, the van driver knew law enforcement was in the area and could have sought them out if help was needed. The

rational conclusion from these facts is that law enforcement assistance was not needed.

Lastly, there are no specific facts to lead to the conclusion that Mr. Smith in need of immediate medical attention. No blood or other obvious signs of injury were located in the vehicle, nor injuries or abnormalities relayed by the caller. Supp. Tr. 13:20-25. The Court of Appeals held the officer's conduct was appropriate because it is not unreasonable to conclude that a driver involved in an accident could have a concussion, soft tissue injury, or broken bones. *State v. Smith*, No. 17-0317 *8. However, there is no evidence that this was a serious enough accident that would have caused such injuries. This conclusion would allow officers to stop every vehicle in the vicinity of the most minor fender bender or vehicle abandoned upon the side of the road.

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.

Based upon the circumstances facing the officers, and the inferences that can be drawn from them no rational person can conclude that Appellant was inside that vehicle or that he was in need of immediate emergency assistance by law enforcement. As such, the Court of Appeals decision should be overturned.

ii. The Circumstances Confronting the Officer Did Not Justify a Seizure Under the Public Servant Doctrine as a Community Caretaker Activity.

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. *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). The difference between public servant and emergency aid 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.

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).

The Court of Appeals held that inference of familial relationship justified the stop to determine if the van driver needed assistance in locating Appellant. *State v. Smith*, No. 17-0317 *7. However, the facts do not support a finding that the driver of the van needed assistance. The van did not stop to see if Mr. Smith was still at the scene of the accident, to ask where he was, seek assistance in finding him, or to see if he was injured; nor had there been any calls for assistance in looking for Appellant. Supp. Tr. p. 9:6-10; 14:4-12; 15:9-23. Given the inference of a familial relationship, recognizing a family member's vehicle involved in an accident, it would be expected that they stop to make sure a loved one was uninjured or seek help in locating them. That is, unless that person had already been apprised of what had occurred and did not need assistance from law enforcement.

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.

Likewise, 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. 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. 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.

iii. The Public Need and Interest Does Not Outweigh the Intrusion Upon the Privacy of Appellant.

Assuming there 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. If the intrusion upon the citizen is not outweighed by the public need, then the stop cannot be valid. *State v. Kurth*, 813 N.W.2d 270, 279 (Iowa 2012).

The court examines a list of four non-exclusive factors to determine if the public need and interest for the seizure outweigh the intrusion upon the citizen:

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).

The evidence is scant regarding the level and nature of distress exhibited by Mr. Smith. Officers were not made aware of any injuries, nor was there any readily apparent evidence of injuries in the vehicle. Supp. Tr. 12:10-23; 13:20-25; 15:9-20. Nor is there any evidence that Mr. Smith, if not assisted, presented a danger to himself or others.

There are ample facts to support that Mr. Smith was either not alone, or at least had access to assistance other than that provided by the officer. As discussed, *supra*, it can be inferred that the van driver had been contacted by Appellant, which means that Mr. Smith had access to assistance other than that offered by the officer. Additionally, if the driver needed assistance in locating Mr. Smith, he had driven past the officer in his marked police vehicle and would have asked.

The Court of Appeals held there was minimal intrusion because there is a lesser expectation of privacy in a vehicle and this impacted upon a liberty interest as opposed to a privacy interest. *State v. Smith*, No. 17-0317 *8-9. To hold that a stop of a vehicle is a minimal intrusion is contrary to the United States Supreme Court's holding in *Terry v. Ohio*; which held that the few seconds it takes to frisk for weapons is "a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment." *Terry v. Ohio*, 392 U.S. 1, 17 (1968). A traffic stop is no less intrusive than a pat down, and generally lasts longer in duration. Further, this Court has held a seizure of a stopped vehicle was intrusive enough to outweigh the government interest, despite the interest being somewhat diminished because the vehicle was not pulled over. *State v. Kurth*, 813 N.W.2d at 280.

II. Even if the Seizure was Justified as a Community Caretaking Function under the Fourth Amendment to the United States Constitution, Article I, Section 8 of the Iowa Constitution Can Provide a Higher Degree of Protection from Unreasonable Searches and Seizures; as Such, the Seizure of the Appellant Violated Article I, Section 8 of the Iowa Constitution.

Preservation of Error: Appellant 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: Appellant 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: If this Court determines that the officer's seizure of Mr. Smith did not violate the Fourth Amendment of the United States Constitution, Article I, section 8 of the Iowa Constitution should be interpreted to provide greater protection to Mr. Smith. 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." *State v. Cline*, 617 N.W.2d at 285. "[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.*

Appellant'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).

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 situations 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.

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 need 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 obtained after that would be inadmissible.

Addressing these arguments, the Court of Appeals held that Appellant "has made a strong argument that the Iowa Constitution should be interpreted differently to disallow the traffic stop at issue." *State v. Smith*, No. 17-0317 *5. However, it declined to interpret the Iowa Constitution differently because that is the province of this Court. *Id.* Appellant implores this Court to interpret Article I, section 8 of the Iowa Constitution, like it has so many times before, and grant Iowa citizens more protection against government intrusions.

Conclusion

For the reasons expressed above, it is imperative that the Iowa Supreme Court grant this Application for Further Review and invalidate the seizure of Mr. Smith.

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 5,567 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1)

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January 9, 2018

Scott A. Michels — 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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IN THE COURT OF APPEALS OF IOWA

No. 17-0317
Filed December 20, 2017

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CODY TYLER SMITH,
Defendant-Appellant.

Appeal from the Iowa District Court for Clarke County, Monty W. Franklin, District Associate Judge.

The defendant challenges an order denying his motion to suppress evidence. **AFFIRMED.**

Scott A. Michels of Gourley, Rehkemper & Lindholm, P.L.C., West Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Thomas E. Bakke, Assistant Attorney General, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and McDonald, JJ.

MCDONALD, Judge.

This case presents the question of whether a police officer's initiation of a traffic stop of a vehicle in the vicinity of and shortly after a traffic accident where the purpose of the stop was to provide assistance rather than investigate crime violates the constitutional prohibition against unreasonable search and seizure. In considering this constitutional question, "our standard of review is de novo. '[W]e make an independent evaluation based on the totality of the circumstances as shown by the entire record.'" *State v. Kurth*, 813 N.W.2d 270, 272 (Iowa 2012).

Before addressing the merits of the question, we first address a jurisdictional issue. "In a criminal case, sentence constitutes final judgment." *State v. Anderson*, 246 N.W.2d 277, 279 (Iowa 1976). The defendant is entitled to appeal from final judgment as a matter of right. *See* Iowa R. App. P. 6.103(1). This appeal is not from a final judgment. Defendant Cody Smith was charged with operating while intoxicated, in violation of Iowa Code section 321J.2 (2016). As will be discussed in more detail below, he moved to suppress evidence derived from an allegedly unlawful traffic stop. The district court denied Smith's motion to suppress. The matter was tried on the minutes, and the district court entered its verdict on February 3, 2017, and set sentencing for a later date. Smith filed his notice of appeal on March 2, 2017, prior to entry of judgment and sentence. Smith's appeal was thus premature and not from final judgment. Rather than dismiss Smith's appeal, we treat his notice of appeal as an application for interlocutory review, grant the application, and address the merits of his claim. *See* Iowa R. App. P. 6.108 ("If any case is initiated by a notice of appeal . . . and the appellate court determines another form of review was the proper one, the case

shall not be dismissed, but shall proceed as though the proper form of review had been requested.").

The facts and circumstances relevant to the merits of the issue are not in dispute. At approximately 4:30 a.m., a deputy of the Clarke County Sheriff's Office and two police officers of the City of Osceola were dispatched to a single-car accident. Dispatch advised that the car was in a ditch and a subject had been observed walking eastbound from the accident. When the officers arrived at the scene of the accident, the driver was nowhere to be found. But the officers did find a driver's license on the driver's side seat. The license belonged to Cody Smith. The vehicle was registered to Steven Smith. As the officers were investigating the accident, they observed a van drive by and briefly stop and turnaround in a nearby driveway. The officers ran a check on the van's license plate and learned the van was registered to Noreen Smith. The addresses for Noreen and Steven Smith were the same. The officers assumed the driver of the van was looking for or had found the person who crashed the vehicle. The officers stopped the van. One of the officers testified he did so to provide assistance to the van driver in the event van driver was searching for the person who had crashed the vehicle or to check on the welfare of the person who had crashed the vehicle in the event the van driver had already found the person. The officer's assumption proved true. Cody Smith was in the van, and he was intoxicated. Cody was arrested and charged with operating while intoxicated (OWI). Cody moved to suppress evidence obtained as a result of the seizure of the van. His motion was denied on the ground the officers were exercising a community caretaking function in stopping the van.

On appeal, the defendant contends the traffic stop was illegal, and he seeks relief under the federal and state constitutions. The Fourth Amendment to the United States Constitution provides "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. The Fourth Amendment is applicable to state actors by incorporation via the Fourteenth Amendment. *See Mapp v. Ohio,* 367 U.S. 643, 660 (1961). The touchstone of the Fourth Amendment is reasonableness. *See Rodriguez v. United States,* 135 S. Ct. 1609, 1617 (2015) (Thomas, J. dissenting) (stating the text of the Fourth Amendment "indicates, and . . . we have repeatedly confirmed, 'the ultimate touchstone of the Fourth Amendment is "reasonableness"'" (quoting *Brigham City v. Stuart,* 547 U.S. 398, 403 (2006))); *State v. Kreps,* 650 N.W.2d 636, 640 (Iowa 2002).

The text of article I, section 8 of the Iowa Constitution is materially indistinguishable from the federal constitutional provision. Nonetheless, the defendant requests this court to interpret the Iowa Constitution to provide greater protection than the Fourth Amendment, contending "Iowa courts cannot interpret the Iowa Constitution to provide less protection than that provided by the United States Constitution." The contention is incorrect and predicated on a misunderstanding of the interplay between federal and state law. Depending upon the particular issue, our precedents interpreting article I, section 8 may provide *greater or lesser* protection than cases interpreting the Fourth Amendment. *See Hulit v. State,* 982 S.W.2d 431, 437 n.11 (Tex. Crim. App. 1998) (quoting Hans A Linde, *E Pluribus—Constitutional Theory and State Courts,* 18 Ga. L. Rev. 165, 179 (1984)) ("The right question, is not whether a state's guarantee is the same as

or broader than its federal counterpart as interpreted by the Supreme Court. The right question is what the state's guarantee means and how it applies to the case at hand. The answer may turn out the same as it would under federal law. The state's law may prove to be more protective than federal law. The state law also may be less protective. In that case the court must go on to decide the claim under federal law, assuming it has been raised."). Regardless, while the defendant has made a strong argument that the Iowa Constitution should be interpreted differently to disallow the traffic stop at issue, we decline to interpret the Iowa Constitution differently from the Federal Constitution on this issue. As a general rule, the task of materially altering substantive rights is best left to the Supreme Court of Iowa. *See Spencer v. Philipp*, No. 13-1887, 2014 WL 4230223, at *2 (Iowa Ct. App. Aug. 27, 2014).

At issue in this case is the legality of the stop of the van. As a general rule, a traffic stop is a "seizure" within the meaning of the Fourth Amendment. *See Whren v. United States,* 517 U.S. 806, 809–10 (1996). A traffic stop is constitutionally reasonable when made "for investigatory purposes when the officer has a reasonable, articulable suspicion that a criminal act has occurred, is occurring, or is about to occur." *State v. Vance,* 790 N.W.2d 775, 780 (Iowa 2010) (citing *Illinois v. Wardlow,* 528 U.S. 119, 123 (2000); *State v. Kinkead,* 570 N.W.2d 97, 100 (Iowa 1997)); *see also Terry v. Ohio,* 392 U.S. 1, 20 (1968). A traffic stop may also be constitutionally reasonable if the stop was initiated to conduct a community caretaking function. *See State v. Crawford*, 659 N.W.2d 537, 543 (Iowa 2003) (describing community caretaking doctrine).

The community caretaking doctrine is well established. In *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973), the Supreme Court explained that police officers "engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." Searches or seizures conducted pursuant to a community caretaking function are constitutionally reasonable despite "[t]he fact that the protection of the public might, in the abstract, have been accomplished by 'less intrusive' means." *Cady*, 413 U.S. at 447. Ultimately, "the standard under the Fourth Amendment is whether the search and seizure were reasonable in light of the facts and circumstances of the case." *Crawford*, 659 N.W.2d at 542. "In a community caretaker case, a court determines reasonableness by balancing the public need and interest furthered by the police conduct against the degree and nature of the intrusion upon the privacy of the citizen." *Id.*

In resolving Smith's claim, we must first determine whether there was a "bona fide community caretaking activity justifying the intrusion." *Id.* at 543. The Iowa Supreme Court has recognized the community caretaking doctrine encompasses at least three separate doctrines: the emergency aid doctrine, the automobile impoundment/inventory doctrine, and the public servant doctrine. *See id.* at 541. At issue in this case are only the first and third doctrines. The two doctrines are closely related. *See id.* "Under the emergency aid doctrine, the officer has an immediate, reasonable belief that a serious, dangerous event is occurring." *Id.* at 541–42 (quoting Mary E. Naumann, *The Community Caretaker Doctrine: Yet Another Fourth Amendment Exception*, 26 Am. J. Crim. L. 325, 333–

34 (1999)). Under the public servant doctrine, the officer has a reasonable belief "that there is a difficulty requiring his general assistance." *Id.* at 542.

On de novo review, we conclude the officers in this case were exercising a bona fide community caretaking function. In reaching that conclusion, we undertake an objective analysis of the circumstances confronting the officers at the time and the officers' responsive conduct. *See id.*; *see also State v. Mireles*, 991 P.2d 878, 880 (Idaho Ct. App. 1999) ("The community caretaking function involves the duty of police officers to help citizens an officer reasonably believes may be in need of assistance."). Here, the officers responded to an accident in the early morning hours with the knowledge someone was observed walking away from the accident. Upon arriving at the scene, the officers could not find the driver but did find the Cody Smith's driver's license on the front seat. The vehicle was registered to Steven Smith. From this, the officers reasonably could have inferred a familial relationship between the owner of the vehicle and the driver of the vehicle. While responding to the scene, officers observed a van registered to Noreen Smith drive by and turn around in a driveway. It was early in the morning in a low-traffic area. The responding officers learned the registered owner of the van, Noreen Smith, had the same address as the owner of the vehicle left at the scene, Steven Smith. From this, the officers could reasonably have inferred a familial relationship between the driver of the vehicle in the ditch, the owner of the vehicle in the ditch, and the van driver. The officers reasonably surmised the driver of the van needed assistance in searching for the driver of the vehicle in the ditch or the driver of the van had found the driver of the vehicle in the ditch and the driver of the vehicle in the ditch might require medical assistance.

We reject Smith's contention that the officers were not exercising a bona fide community caretaking function because there was not stronger evidence of injury or distress—for example, reports of an injured person, blood at the crash site, or calls for medical assistance. While readily apparent evidence of injury or distress would have provided greater support for the officers' conduct, the absence of readily apparent evidence of injury or distress does not render the officers' conduct unreasonable. For example, it is not unreasonable to conclude a driver in an accident may have suffered an injury or injuries that might not leave evidence at the scene, including, for example, a concussion, soft tissue injury, or broken bones. The concern for the driver was particularly acute here. Dispatch reported someone was observed walking eastbound from the crash. The crash occurred early in the morning before sunrise. A potentially confused and injured person walking along a roadway in the dark creates further risk of injury to the potentially injured pedestrian or to motorists who might have to take evasive action to avoid injuring the person. In determining whether the community caretaking function is applicable, we consider "whether the facts available to the officer at the time of the stop would lead a reasonable person to believe that the action taken by the officer was appropriate." *State v. Tague*, 676 N.W.2d 197, 204 (Iowa 2004). The initiation of a traffic stop for the purpose of providing assistance in searching for an injured motorist or to provide medical care to an injured motorist is appropriate action.

Having concluded the officers engaged in a bona fide community caretaking function in stopping the van to determine whether any assistance was necessary, we next address whether the public need at the time of the stop outweighs the intrusion upon the motorist's privacy. We conclude the public need outweighs the

intrusion. First, motorists have only a limited privacy interest in their vehicle. *See Cardwell v. Lewis*, 417 U.S. 583, 590 ("One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects. . . . It travels public thoroughfares where both its occupants and its contents are in plain view."). Second, the intrusion upon *privacy* here was limited. The traffic stop interfered more with the van driver's *liberty interest* than the van driver's *privacy interest*. Third, our court has stated a traffic stop under these circumstances is only a "minimal intrusion." *Crawford*, 659 N.W.2d at 543. Fourth, the minimal intrusion here was lessened because the stop was precipitated by the reasonable belief that the van driver might need assistance in searching for a potentially injured relative or the van driver's relative might be in need of medical attention. Finally, "[w]hen an officer believes in good faith that someone's health or safety may be endangered . . . public policy does not demand that the officer delay any attempt to determine if assistance is needed." *State v. Gocken*, 857 P.2d 1074, 1080 (Wash. Ct. App. 1993). Indeed, it would have been a dereliction of duty for the officers to decline assistance under the circumstances presented.

For the foregoing reasons, we conclude the traffic stop at issue was constitutionally reasonable as a permissible and appropriate exercise of the community caretaking function. "When evidence is discovered in the course of performing legitimate community caretaking or public safety functions, the exclusionary rule is simply not applicable." *State v. Mitchell*, 498 N.W.2d 691, 694 (Iowa 1993). The district court thus did not err in denying the defendant's motion to suppress evidence.

AFFIRMED.

IOWA APPELLATE COURTS

State of Iowa Courts

Case Number	**Case Title**
17-0317	State v. Smith

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