IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 16-1720

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TERRY LEE COFFMAN,
Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT
OF STORY COUNTY
THE HONORABLE JAMES MALLOY (TRIAL AND MOTION TO SUPPRESS)

APPELLANT'S FINAL BRIEF AND REQUEST FOR ORAL ARGUMENT

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CERTIFICATE OF FILING

I, Matthew T. Lindholm, 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 April 20, 2017.

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I, Matthew T. Lindholm, hereby certify that on April 20, 2017, I served a copy of the attached brief on all other parties to this appeal by electronically filing a copy of the attached brief:

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

U.S. Supreme Court Cases

U.S. Federal Court Cases

Iowa Cases

Out of State Cases

Statutes and Constitutions

Secondary Sources

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. WHETHER THE DISTRICT COURT ERRED WHEN IT CONCLUDED THAT THE SEIZURE OF THE APPELLANT'S VEHICLE WHEN IT WAS STOPPED LAWFULLY ON THE SHOULDER OF THE HIGHWAY DID NOT VIOLATE THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 8 OF THE IOWA CONSTITUTION.

Legal Authority

U.S. Supreme Court Cases

Cady v. Dombrowski, 413 U.S. 433 (1973)
U.S. v. Brignoni-Ponce, 422 U.S. 873, 878 (1975)

U.S. Federal Court Cases

U.S. v. Dunbar, 470 F. Supp.704 (D. Conn. 1979)
U.S. v. Gross, 662 F. 3d 393, 396 (6th Cir. 2011)
U.S. v. King, 990 F. 2d 1552, 1560 (10th Cir. 1993)
Tinius v. Carroll Cnty. Sheriff Dep't, 321 F. Supp. 2d 1064, 1075 (N.D. Iowa 2004)

Iowa Cases

State v. Brunk, 2006 WL 2706145 (Iowa App.) (Unpublished)
State v. Carlson, 548 N.W.2d 138 (Iowa 1996)
State v. Casey, 786 N.W.2d 520 (Table), 2010 WL 2090858 (Iowa App.)
State v. Cline, 617 N.W.2d 277 (Iowa 2000)
State v. Crawford, 659 N.W.2d 537 (Iowa 2003)
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 (Unpublished)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. Kersh, 313 N.W.2d 566 (Iowa 1981)
State v. Kurth, 813 N.W.2d 270 (Iowa 2012)
State v. Meyers, 799 N.W.2d 132 (Iowa 2011)
State v. Naujoks, 637 N.W.2d 101 (Iowa 2001)
State v. Nikolsky, 796 N.W.2d 458 (Table), 2004 WL 151070 (Iowa App.) (Unpublished)
State v. Ochoa, 792 N.W.2d 260 (Iowa 2010)
State v. Petzoldt, 2011 WL 1055087 (Iowa App.) (Unpublished)
State v. Sellers, 2015 WL 1055087 (Iowa App.) (Unpublished)
State v. Standley, 2003 WL 22336257 (Iowa App.) (Unpublished)

State v. Tague, 676 N.W.2d 197 (Iowa 2004)
State v. VanWyk, 802 N.W.2d 237 (Table), 2011 WL 2420708 (Iowa App.) (Unpublished)
State v. Wilkes, 756 N.W.2d 838 (Iowa 2008)

Out of State Cases

Comm. V. Canavan, 667 N.E.2d 264 (Mass. 1996)
Provo City v. Warden, 844 P.2d 360 (Utah App. 1992)
State v. Anderson, 439 N.W.2d 840 (Wis. App. 1990)
State v. Boutin, 13 A3d 334 (N.H. 2010)
State v. Button, 86 A.3d 1001 (Vt. Supreme Ct. 2013)
State v. Graham, 175 P.3d 885 (Mont. 2007)
State v. Rinehart, 617 N.W.2d 842 (S.D. 2000)
State v. Schmidt, 47 P.3d 1271 (Idaho App. 2002)

Statutes and Constitutions

Iowa Code § 321.276(2)
Iowa Code § 321.324

Secondary Sources

Mary E. Neumann, *The Community Caretaker Doctrine*: *Yet Another Fourth Amendment Exception*, Am. J. Crim L. 325 (1999)
Michael R. Diminio, *Police Paternalism: Community Caretaking, Assistance Searches, and Fourth Amendment Reasonableness*, 66 Wash. & Lee L. Rev. 1485, 1490 (2009)

STATEMENT OF THE CASE

Nature of the Case and Course of Proceedings

Mr. Coffman was charged by way of Trial Information filed on June 16, 2016, with Operating While Intoxicated, First Offense, in violation of Iowa Code section 321J.2. Trial Information (6/16/16); App. P.1-2. Prior to Trial, the Mr. Coffman filed a timely Motion to Suppress Evidence seeking to suppress all evidence obtained due to an illegal seizure of his person under both the Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Iowa Constitution. Motion to Suppress Evidence (8/25/16); App. P.3-5. The Trial Court found that a seizure occurred, but denied the Motion citing the "community caretaking" exception to the warrant requirement as a basis to justify the warrantless seizure of Mr. Coffman despite the fact Deputy Hochberger did not notice any indicia of distress prior to effectuating the seizure. Supp. Tr. PP.11 (10/21/16); App. P.18.

Mr. Coffman ultimately filed a Motion to Reconsider and Request for Expanded Finding of Facts and Conclusions of Law. Motion to Reconsider (9/12/16); App. P.41-61. Although the Court expanded on the findings of facts, the Court nonetheless denied Mr. Coffman's request to reconsider specifically finding that neither the Fourth Amendment nor Article 1, Section 8 of the Iowa Constitution was violated. Order Denying Motion to Reconsider (9/14/16); App. P.62-65. Mr. Coffman waived his right to a jury trial and stipulated to a trial on the minutes of

testimony. Written Waiver and Stipulation (9/15/16); App. P.102-107. Prior to Trial, a joint stipulation of additional facts was entered to supplement to the record made at the hearing on the motion to suppress. Written Stipulation (10/11/16); App. P.101.

The matter proceeded to a stipulated trial on the minutes of testimony on October 12, 2016, and the District Associate Court found Mr. Coffman guilty of operating while intoxicated, first offense, in violation of Iowa Code section 321J and sentenced Mr. Coffman to two days in jail and statutory minimum fine. Findings of Fact, Conclusion of Law, and Verdict; Judgment Entry (10/12/16); App. P.66-68; 69-71. Notice of Appeal was timely filed on October 12, 2016. Notice of Appeal (10/12/16); App. P.72-73.

Statement of Facts

Deputy Nicholas Hochberger, of the Story County Sheriff's Department, was on patrol in the early morning hours of May 22, 2016. Supp. Tr. 5 (10/21/16); App. P.12. He was in uniform driving a fully marked patrol vehicle when he encountered Mr. Coffman's vehicle stopped facing east on the south side of 320th Street, which is a gravel road. Supp. Tr. 5-6 (10/21/16); App. P.12-13. He first noticed Mr. Coffman's vehicle when he was roughly one half to one quarter of a mile away and realized that the vehicle was stopped and had the brake lights engaged. Supp. Tr. 7 (10/21/16); App. P.14. Deputy Hochberger did not know how long the vehicle had

been stopped, did not see it move as he approached, and there was no indication the hazard lights were activated. Supp. Tr, P. 8 (10/21/16); App. P.15. Upon approaching the vehicle and prior to stopping his vehicle, Deputy Hochberger activated his overhead red and blue flashing lights. Supp. Tr. 10-11 (10/21/16); App. P. 17-18.

The reason he stopped and ultimately approached Mr. Coffman's vehicle, was to determine if the people in the vehicle needed help. Supp. Tr. P. 15 (10/21/16); App. P.22. However, Deputy Hochberger admitted that he did not have any specific facts prior to activating his red and blue flashing lights that led him to believe the occupants of the vehicle were in need of assistance other than the vehicle being stopped on the side of the road with the brake lights engaged. Supp. Tr. P. 17 (10/21/16); App. P.24. To the contrary, Deputy Hochberger testified that he comes into contact with five (5) to fifteen (15) vehicle a week that are stopped on the side of the road and he routinely activates his red and blue emergency lights in those circumstances despite the fact that the majority of those vehicles don't need assistance. Supp. Tr. P. 9, 11 (10/21/16); App. P.16, 18. Deputy Hochberger did have any facts to believe the occupants of the vehicle were engaged in any criminal activity or had been involved in an accident the record is devoid of any evidence that the location of Mr. Coffman's vehicle on the side of a gravel road posed a danger to the occupants or any other vehicles. Supp. Tr. P. 17, 18 (10/21/16); App. P.24, 25.

When asked why he was stopped on the side of the road, Mr. Coffman told him that the reason he pulled over was to rub his wife's neck. State's Exhibit 1 (9/9/16); App. P.6.

Routing Statement

Retention of this case by the Iowa Supreme Court is appropriate because the case presents a substantial issue of first impression and opportunity for clarification-namely, the application of the public servant function of the "community caretaking" exception to the warrant requirement under article I section 8 of the Iowa Constitution. Iowa R. App. P. 6.1101(2)(c).

Legal Argument

I. THE SEIZURE OF THE APPELLANT'S VEHICLE FOR BEING LAWFULLY STOPPED ON THE SHOULDER OF A HIGHWAY VIOLATED THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 8 OF THE IOWA CONSTITUTION.

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

Standard of Review: Mr. Coffman alleges a violation of his constitutional rights under the Fourth Amendment to the United States Constitution and Article I Section 8 of the Iowa Constitution. As such, the court's review is de novo. *State v. Naujoks*, 637 N.W.2d 101, 106 (Iowa 2001).

Argument: When a driver of a motor vehicle lawfully stops on the side of the road and there are no indicia the driver, the occupants of the car, the vehicle itself, or others are in distress, the protections of the Fourth Amendment to the United States Constitution and Article 1, Section 8 cannot be "eviscerated" under the guise of community caretaking. This is because subject to a few carefully drawn exceptions, warrantless searches are *per se* unreasonable and the only way to overcome this presumption of unreasonableness is if the State proves by a preponderance of the evidence with specific and articulable facts that a recognized exception to the warrant requirement applies. *State v. Carlson*, 548 N.W.2d 138, 140 (Iowa 1996).

In the present case, the State failed to provide any specific articulable facts to show that at the time Deputy Hochberger seized Mr. Coffman a bona fide community caretaking situation existed or that the intrusion on Mr. Coffman outweighed the public need. If the District Court's decision is not overturned, the protections of the Fourth Amendment and Article 1, Section 8 of the Iowa Constitution vanish when the general motoring public engages in a completely innocent, legal, and responsible activity by pulling to the side of the road to read a map, make a telephone call home, switch drivers, check a load they are hauling, or to rub their wife's shoulders. As such, the overreaching conclusion of the District Court denying Mr. Coffman's motion to suppress must be reversed in order the

preserve the integrity of both the Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Iowa Constitution.

A. The Warrantless Seizure of the Defendant Violated the Fourth Amendment to the United States Constitution Because the Seizure was not Performed Pursuant to a bonafide "Community Caretaking" Function.

One recognized but often criticized exception to the warrant requirement is the so-called "community caretaking" exception which was first devloped in *Cady v. Dombrowski,* 413 U.S. 433, 441, 93 S.Ct. 2523, 2528, 37 L.Ed.2d 706, 714-15 (1973). "As the name implies, this exception permits a warrantless search 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*. (emphasis added). 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." *United States v. King,* 990 F.2d 1552, 1560(10th Cir. 1993) citing *United States v. Brignoni-Ponce,* 422 U.S. 873, 878 (1975).

"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). "This balancing requirement to determine reasonableness requires an objective analysis of the circumstances confronting the

police officer: Under the circumstances would a reasonable person have thought an emergency existed?" *Id*., citing *Carlson*, 548 N.W.2d at 142-43.

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 bona fide community caretaker activity?; and
>
> (3) if so, did the public need and interest outweigh the intrusion upon the privacy of the citizen?

Id. at 543. The answer to all three of these questions under the present facts makes it clear the District Court committed reversible error in denying Mr. Coffman's motion to suppress.

i. There was a seizure within the meaning of the Fourth Amendment when Deputy Hochberger approached and pulled behind Mr. Coffman's vehicle with his red and blue lights activated.

"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." *Crawford*, 659 N.W.2d at 543. At the suppression hearing, the State did not contest the fact that a seizure occurred and stipulated that the red and blue lights were activated in order notify Mr. Coffman that he was not free to leave. Written Stipulation and Notice of Intent to Supplement the Suppression Hearing Record (10/11/16); App. P.101. Given the lack of argument on this issue at the suppression hearing and the State's subsequent

stipulation, they are precluded from arguing a seizure did not occur on appeal. See *State v. Meyers*, 799 N.W.2d 132, 147 (Iowa 2011) (holding "issues on appeal not raised in the district court are deemed waived").

Nevertheless, a brief examination of the law indicates the activation of the red blue lights constituted a seizure. Iowa Code Section 321.324 requires that a vehicle being approached by an emergency vehicle with red and blue flashing lights must move to the side of the road and let the vehicle pass. Thus, had Mr. Coffman attempted to leave when Deputy Hochberger was approaching with his red and blue lights activated he would have violated the law. Moreover, caselaw has determined that the activation of the red and blue emergency lights constitutes a seizure. *See State v. Wilkes*, 756 N.W.2d 838, 844 (Iowa 2008) (finding that police authority is invoked with the activation of emergency lights, commanding subjects to stop and remain); see also *State v. Petzoldt*, 2011 WL 2556961 (Iowa App. Unpublished) (holding that defendant was seized when the officer "bathed [him] in the strobic show of authority from the patrol vehicle"); *State v. Sellers*, 2015 WL 1055087 (Iowa App. Unpublished) (finding "it is uncontested that a seizure occurred when the officer turned on his flashing overhead lights").

It is also important to note, Deputy Hochberger acknowledged that it would have been unlawful for Mr. Coffman to drive away after he had activated his red and blue emergency lights and one of the reasons for activating his lights was to notify

the driver of police presence. Supp. Tr. P.10, 17 (10/21/16); App. P.17, 24. Finally, Deputy Hochberger's vehicle was equipped with other lighting equipment other than his red and blue flashing lights yet he chose not to activate those lights. Written Stipulation and Notice of Intent to Supplement the Suppression Hearing Record (10/11/16); App. P.101. Given the stipulation and lack of argument by the State on this issue, as well as the caselaw surrounding this issue, it is clear Mr. Coffman was seized when Deputy Hochberger activated his red and blue flashing lights.

ii. There were insufficient facts to establish a 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, *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. *Crawford*, 659 N.W.2d at 541.

No argument was made that the impound/inventory analysis was appropriate and no facts would support that analysis, thus only the emergency aid and public

servant activities could possibly apply to the present facts. These two doctrines 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. (Emphasis added).

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).

a. The emergency aid exception is not applicable.

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. *Carlson*, 548 N.W.2d at 141. The emergency aid exception is subject to strict limitations, and in order 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. "an immediate, reasonable belief that a serious, dangerous event is occurring"). *Id.* at 142.

The Iowa Supreme Court recently engaged in a thorough analysis of the emergency aid function of the community caretaking exception to the warrant requirement. See generally *State v. Kurth*, 813 N.W.2d 270 (Iowa 2012). The Court was asked to determine whether an officer was justified in following a motorist to a parking lot and activating his emergency lights after watching him hit a sign that was in the middle of the road. Noting that actions under 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", the Court determined no emergency existed at the time the officer effectuated the seizure and therefore found a violation of the Fourth Amendment. *Id*. at 278; (quoting *Carlson*, 548 N.W.2d at 142). The court further concluded that the officer simply could have pulled up next to Mr. Kurth and suggested that he evaluate his car instead of effectuating a seizure. *Id*.

More recently, the Iowa Court of Appeals refused to uphold the stop of a motorist under the emergency aid exception on very similar but slightly more egregious facts than the present situation. *State v. Sellers*, 2015 WL 1055087 (Iowa App. Unpublished). In *Sellers*, a Deputy initially observed a vehicle that may have stopped slightly on the traveled portion of a highway slightly or just off the traveled portion of the roadway during the early morning hours. *Id.* at 1. When the officer turned around to investigate, the vehicle had driven a quarter to a half-a-mile further

down the road and was stopped on the side of the road with the lights on. *Id.* The Deputy pulled behind the vehicle and the and activated his rear flashing lights and a white spotlight at which time the car began to merge back onto the road prompting the officer to activate his emergency lights and stop the car. Finding that "there was no indication that any emergency was taking place" the Court ultimately concluded that "our case law indicates much more is needed to justify a seizure based on an officer's role as a community caretaker than appears in the record in this case." *Id.* at 4.

Likewise, other Appellate decisions have found seizures to be unlawful under similar circumstances. For example, in *State v. Casey*, 2010 WL 2090858 (Iowa App.) (unpublished), the Court of Appeals determined that the arresting officer had no objective reasonable belief that an emergency existed (i.e. lost driver) necessitating the seizure of the defendant after watching the defendant's vehicle travel slowly, drive the same course twice in several minutes, and briefly stop in a residential driveway. In *State v. VanWyk*, 2011 WL 2420708 (Iowa App. Unpublished), the Iowa Court of Appeals concluded that observing a stopped vehicle flash the brake lights two times as he drove by did not justify the officer pulling behind the vehicle and activating his lights as it was not clear and emergency existed.

By contrast, in *State v. Crawford*, 659 N.W.2d 537 (Iowa 2003), and *State v. Kersh*, 313 N.W.2d 566 (Iowa 1981), the Iowa Supreme Court upheld the stop of the

defendants' vehicles based upon the emergency aid exception when there is evidence that there is evidence the person was slumped over at the wheel, or had taken "some pills" and was being physically aggressive. However, unlike the officers in *Crawford* and *Kersh*, Deputy Hochberger had no specific articulable reason to believe that Mr. Coffman was under the influence of any drugs or alcohol or that he was experiencing any type of physical condition which created a dangerous situation to others or himself. *See Crawford*, at 543; *Kersh*, at 567-68.

Deputy Hochberger testified that he did not observe any facts prior to activating his lights that led him to believe the driver of the vehicle was in need of assistance other than the vehicle lawfully stopped on the side of the road with the brake lights activated. Supp. Tr. P.17 (10/21/16); App. P.24. More importantly, when questioned by the Assistant County Attorney, Deputy Hochberger indicated he did not see any signs of distress prior to activating his emergency lights. Supp. Tr. P. 11 (10/21/16); App. P.18. Although Deputy Hochberger, testified that many of his encounters with vehicles stopped on the side of the road don't have any outward indicia of distress, he also testified that the majority of his encounters with motorists do not result in the motorist needing assistance. Supp. Tr. PP. 11, 18, 19 (10/21/16); App. P.18, 25, 26. This fact is important as it demonstrates that a "reasonable officer" would not have believed Mr. Coffman needed assistance. See *Kurth* 813 N.W.2d at 279 (finding that radio communications which indicated the

officers didn't think there was any danger to public were relevant to determining what actions a reasonable officer thought was necessary).

The State bears the burden to provide "specific and articulable facts" to show that a "reasonable person would have thought an emergency existed." *Carlson*, 548 N.W.2d at 142-143. Given that Deputy Hochberger had no specific facts that could reasonably lead him to believe "an immediate, reasonable belief that a serious, dangerous event [was] occurring", the seizure of Mr. Coffman cannot be justified under the "emergency aid" function.

b. The "public servant" function is not applicable.

The State may also attempt to justify the stop of Ms. Coffman's vehicle under the "public servant" function of the "community caretaking" exception to the warrant requirement. Although closely related to the emergency aid function, there are very few Iowa cases discussing the "public servant" function. As discussed *supra*, the Iowa Supreme Court in *State v. Kurth*, provided one of the most thorough analysis of the "community caretaking" exception and part of the opinion included a brief analysis under the public servant function. "Assuming that Kurth needed a friendly reminder to take a look at the front end of his vehicle, this could have been provided without activating the patrol car's emergency lights and blocking him in." *Id*. at 280. "A balancing of public interest and privacy considerations does not favor the State." *Id*.

In *State v. Tague*, the Iowa Supreme Court found a violation of Article 1, Section 8, after an officer stopped a motorist at 2 a.m. based on an "isolated incident of the driver briefly crossing an edge line" of a divided roadway, 676 N.W.2d 197, 205-206 (Iowa 2004). One basis asserted by the State to justify the stop was under the community caretaking exception alleging that the driver could have been fatigued. In concluding that the totality of the circumstances could not justify the community caretaking function, the court noted that many circumstances could lead to a vehicle momentarily crossing the center line other than intoxication or fatigue. *Id.* at 205.

Furthermore, the Court of Appeals in *Sellers* (discussed supra) also refused to justify the seizure under the public servant function of the community caretaking exception by concluding "there was no indication Sellers needed the deputy to perform any public service function or to assist her." 2015 WL 1055087 at 4. The driver in *Sellers* had stopped the vehicle once (possibly in the traveled portion of the paved highway), and then moved the vehicle and was stopped again on the side of the same highway. Those facts more strongly suggest that *Sellers* needed assistance since she had stopped on the side of a paved highway twice in a short distance than Mr. Coffman's action of stopping once on the shoulder of a gravel road.

Officers may not use the public servant exception when the circumstances do not indicate the subject of the encounter needs aid. Mary E. Neumann, *The*

Community Caretaker Doctrine: Yet Another Fourth Amendment Exception, Am. J. Crim L. 325, 341 (1999). Other States addressing similar circumstance have refused to justify the seizure of a stopped motorist without any further indicia of distress under the community caretaking exception. See *State v. Button*, 86 A.3d 1001 (Vt. Supreme Court 2013)(finding that the community caretaking exception did not justify the seizure of a car stopped on the shoulder of a back-country road with it's engine running, where there was no danger to oncoming traffic, no signs of erratic driving, and no signs of distress); *State v. Schmidt*, 47 P.3d 1271 (Idaho App. 2012) (stop not justified under community caretaking where the vehicle was lawfully stopped off of a road, no evidence of the vehicle being driven recklessly, no exterior damage to believe an accident occurred, and not observation about the occupant that they were in need of assistance); *State v. Graham*, 175 P.3d 885 (Mont. 2007) (finding a seizure unjustified under the community caretaking function when the officer observed a stopped vehicle on the side of the road and the occupants kissing); *State v. Boutin*, 13 A.3d 334 (N.H. 2010) (seizure of vehicle legally stopped on side of the road not justified under the community caretaking doctrine when the trooper did not observe any signs of an accident, that the car was disabled, or that the passengers were in any type of distress; *United States v. Gross*, 662 F.3d 393, 396 (6th Cir. 2011) (finding community caretaking exception did not justify a seizure of

a parked car with the engine running, no apparent driver, and a barely-visible individual slumped down in the passenger seat).

"The 'community caretaking' exception should be cautiously and narrowly applied to minimize the risk that it will be abused or used as a pretext for conducting an investigatory search for criminal evidence." (emphasis added) *State v. Nikolsky*, 2004 WL 151070, *6 (Iowa App.) (unpublished), citing *State v. Rinehart*, 617 N.W.2d 842, 844 (S.D.2000) (internal citations omitted). In the present case, the record is completely devoid of any evidence that the driver or the occupant had been involved in an accident, were in need of medical assistance, had a faulty vehicle, or posed a danger to themselves or any other motorists. To the contrary, the observations Deputy Hochberger made at the time he effectuated a seizure consisted solely of actions consistent with someone who stopped off the beaten path to use their cell phone, switch drivers, read a map, give a spouse wife a shoulder rub, or any number of legal non-distressed activities motorists engage in on a regular basis. See *State v. Standley*, 2003 WL 22336257 * 4 (Iowa App Unpublished) (although decided on a reasonable suspicion standard the court determined that the seizure of an individual lawfully stopped in a cemetery late at night was unreasonable because justifying the stop "would be tantamount to holding that the mere act of being in a cemetery after dark constitutes reasonable and arcticulable cause to justify an investigatory stop").

Thus, given the lack of evidence supporting a reasonable belief that Mr. Coffman his passenger, or anyone else was in need of assistance or were in danger, it becomes impossible for the State to meet their burden of providing specific facts that a "bonafide community caretaking" situation existed at the time Mr. Coffman was seized. To justify a seizure under these facts would completely "eviscerate" a motorists right to be free from unreasonable searches and seizures because they simply pull to the side of the road and legally stop their vehicle to engage in a legitimate activity. In essence, if a seizure is justified under these facts, the exception will swallow the rule.

iii. The public need and interest outweigh the intrusion upon the privacy of the citizen?

Assuming *arguendo* that 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. Actions under 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." *Kurth*, 813 N.W.2d at 278; (quoting *Carlson*, 548 N.W.2d at 142). If the intrusion upon the private citizen is not outweighed by the public need, then the stop cannot be valid. *Id.* at 279.

In *Kurth* the Court found that "the State's safety concern based on the damage to Kurth's vehicle seems marginal at best." *Id.* at 280. The Court further determine

that if "Kurth needed a friendly reminder to take a look at the front end of his vehicle, this could have been provided without activating the patrol car's emergency lights and blocking him in." *Id.*

In initially denying the motion to suppress, the District Court did not really address what the public need was in this case other than citing general safety issues. Supp. Tr. P. 27 (10/21/16); App. P.34. However, the Court attempted to further clarify the public need in the ruling denying Mr. Coffman's Motion for Reconsideration by stating:

> "A car parked on the shoulder of a highway at 1:00 A.M. in a rural area in Iowa should raise a number of concerns. There is a safety issue in having a vehicle parked within two feet of the traveled portion of a highway, especially at 1:00 A.M., in an area that is not lighted. Second, the occupant(s) of the vehicle might have car problems or medical issues that they are experiencing. Most people would not simply pull over to the side of the road in this type of setting at such an hour. It would have been irresponsible for Deputy Hochberger to simply drive by without checking on the vehicle." Order Denying Motion to Reconsider P. 1 (9/14/16); App. P.62.

There are several problems with the Court's logic in this regard. First, all of the above cited concerns by the Court in the present case were similarly presented and rejected in *Sellers*.[1] Second, the finding that the positioning of Mr. Coffman's vehicle created a safety concern for other motorists was never a fact articulated in

[1] A review of the suppression transcript in *State v. Sellers*, 2015 WL 1055087 (Iowa App. Unpublished), wherein the same Judge rendered a ruling denying the motion on a similar basis although pointing out that Ms. Sellers stopped not once but twice on the side of the road.

the record at the suppression hearing and seems to have been manufactured by the Court. This was a gravel road and a review of the video fails to demonstrate any vehicles passing their location while the investigation was being conducted. Third, the conclusion that the occupants "*might*" have car problems or medical issues", removes the State's burden of providing specific and articulable facts to support the Deputy's actions. (Emphasis Added). Finally, the Court appears to have replaced his opinion that "most people would not simply pull over on the side of the road" with the objective testimony of the officer that the majority of vehicles he comes into contact with on the side of the road do not need assistance. Supp. Tr. P. 18 (10/21/16); App. P.25. Therefore, it becomes difficult if not impossible to determine how someone engaged in completely lawful activity with no signs of distress or danger could somehow generate a serious public interest. The record in this case fails to generate any public need, much less a more sufficient public need than those which were shot down in *Sellers*, *Kurth*, *Casey*, *VanWyk*, and *Tague* discussed *supra*.

When determining whether the Deputy did "more than is reasonably necessary to determine whether a person is in need of assistance", the Courts have looked at what other options were available to the officer other than effectuating a seizure. See *State v. Anderson*, 417 N.W.2d 411 (Wis. App. 1987), (finding the court should look at what alternatives were available to the officer aside from the intrusion

accomplished). For example, in *Kurth*, the Court noted that the office did not need to block the motorists vehicle in and activate his lights to inform him that he needed to look at his vehicle. 813 N.W.2d at 280. Seizures have also been found unconstitutional when a consensual encounter could have been effective in determining whether someone was in need of assistance. See *United States v. Gross*, 662 F.3d 393, 401 (6th Cir.2011).

Several different approaches could have been taken by Deputy Hochberger which would have been less intrusive and invasive than "bath[ing] [him] in the strobic show of authority from the patrol vehicle" in order to determine if Mr. Coffman or his passenger needed assistance. For example, he could have simply driven by and made observations about the vehicle and the occupants and then determined if assistance was warranted. He could have pulled up beside Mr. Coffman and engaged him in a consensual encounter to determine if assistance was needed as was suggested in *Kurth* and *Gross*. Finally, given that his car had rear facing amber lights and hazard lights, he simply could have pulled up in the same manner and activated those lights in an attempt to engage Mr. Coffman in a consensual encounter while at the same time alerting other traffic of his presence.

The State bears the burden in this case and the record is devoid of any reasons why these other approaches would have been inadequate. "Given the relatively minor nature of the societal interest and the alternatives available short of seizure to

pursue the matter…the seizure of [Coffman's] vehicle was unreasonable." *State v. Anderson*, 439 N.W.2d 840, 848 (Wis. App) *rev'd on other grounds*, 454 N.W.2d 763 (1990). Just as the Court concluded in *Kurth*, "the balancing of public interest and privacy considerations does not favor the State" and as such cannot justify the seizure in this case. 813 N.W.2d at 280.

B. Even if the Seizure was Justified as a "Community Caretaking" Function under the Fourth Amendment of the United States Constitution, Article 1 section 8 of the Iowa Constitution Provides a Higher Degree of Protection from Unreasonable Searches and Seizures; as Such, the Seizure of the Defendant's Vehicle Violated Article I Section 8 of the Iowa Constitution.

If the Court determines that the officer's stop of Ms. Coffman's vehicle did not violate the Fourth Amendment to the United States Constitution, Article 1 Section 8 of the Iowa Constitution should provide greater protection to Ms. Coffman and Iowan's in general. Iowa courts are 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.*

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. See e.g., *State v. Cline*, 617 N.W.2d 277, 278 (Iowa 2000) (rejecting good faith exception to the exclusionary rule under article I section 8 of the Iowa Constitution); *State v. Cullison*, 173 N.W.2d 533 (Iowa 1970) (rejecting the notion that a person's search and seizure protections are stripped or diluted by virtue of their status as a parolee); *State v. Ochoa*, 792 N.W.2d 260, 292 (Iowa 2010). (holding that warrantless, suspicionless searched of a parolee's motel room violated article I section 8 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. Kurth*, 813 N.W.270 (Iowa 2012)*; State v. Garrison*, 791 N.W.2d 428, 2010 WL 3661815, *1 (Iowa App) (unpublished). The Iowa Supreme Court, however, has only briefly analyzed the "community caretaking" doctrine under Article I Section 8 of the Iowa Constitution. *See State v. Tague*, 676 N.W.2d 197 (Iowa 2004). While the Court declined to decide *Kurth* on independent state constitutional grounds, the Court has the opportunity to develop this area of law independently from the Federal Constitution and should take advantage of the opportunity to do so in this case. *See* 813 N.W.2d at 281-83 (Appel, J., concurring specially) (explaining that while *Kurth* was decided on federal

constitutional grounds, the Court reserves the right to develop a different doctrinal approach under Iowa law).

The Appellant's position under the Iowa Constitution is a simple one: prohibit seizures and/or the introduction of evidence obtained during a search or seizure conducted under the "public servant" component of the community care taking exception pursuant to Article 1 Section 8 of the Iowa Constitution. Officer's should only be allowed to search or seize, and introduce the fruits of that search and/or seizure in a criminal case only if objective facts support a true emergency situation. The Court should find that, under article I section 8 of the Iowa Constitution, a seizure is unnecessary and unconstitutional under the "public servant" prong of the community caretaking exception and as a result the exclusionary rule should prohibit the introduction of that evidence in a criminal proceeding gathered in that context.

"The core of the community-caretaking doctrine ...—where police act to protect or assist the public—has been left with little doctrinal guidance from the Supreme Court other than the vague command of reasonableness." Michael R. Dimino, *Police Paternalism: Community Caretaking, Assistance Searches, and Fourth Amendment Reasonableness,* 66 Wash. & Lee L.Rev. 1485, 1490 (2009); *see also Tinius v. Carroll Cnty. Sheriff Dep't,* 321 F.Supp.2d 1064, 1075 (N.D.Iowa 2004) (observing that "in community caretaking cases, as elsewhere, reasonableness has a fluid quality"). The community caretaking doctrine has also 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 Kurth.* 813 N.W.2d at 281-83 (Appel, J., concurring specially). The "fluid quality" and lack of "doctrinal guidance", especially as it relates to the public servant function of the community caretaking doctrine, leaves it ripe for abuse. Moreover, it fails to provide citizens and officers with any guidance on what conduct will be subject to a lawful search or seizure thereby necessitating change under the Iowa Constitution.

Iowa's newly enacted "texting ban," requires a motorist to pull completely off of the traveled portion of the road prior to using a hand-held electronic communication device to write, send or read a text message while driving a motor vehicle. Iowa Code §321.276(2). Allowing a seizure to lawfully occur under the present facts would subject innocent people to harassment for simply complying with the law, using a map, switching drivers, retrieving something from the trunk, etc. Abolishing the public servant function of the community caretaking doctrine under the Iowa Constitution would prevent an officer from effectuating off-the-cuff seizures in these circumstances.

The Court can easily reconcile its entire body of community caretaking precedent with this approach, because there is very little substantive "public servant" precedent. All of the interests served under an officer's legitimate "public servant" function can just as easily be accomplished without the need to seize a person unless

there is a true emergency where some person is in grave danger. As such, adopting a rule that prohibits seizures of individuals under the "public servant" component to the community caretaking function, correctly protects the individual privacy interest of citizens in the State of Iowa while still ensuring effective law enforcement.

The Court should limit the application of the community caretaker function to situations where an officer has "an immediate, reasonable belief that a serious, dangerous event is occurring"- i.e. that emergency aid is required. "It is vital to recognize that '[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*, 796 N.W.2d 458 (Table), 2004 WL 151070, at *6, quoting *State v. Rinehart*, 617 N.W.2d 842, 844 (S.D. 2000) (citations omitted). Allowing the exception to apply to the facts of this case would open the door for such abuse to continue to occur.

The Utah Court of Appeals has limited the community caretaking exception to only emergency aid 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. 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 of the exception by law enforcement.

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. This is the best way to "encourage genuine police caretaking functions while deterring bogus or pretextual police activities." The Court should find that the community caretaking exception under article I section 8 of the Iowa Constitution does not apply to the instant case because no emergency

situation existed to justify the stop of Ms. Coffman' vehicle. Other options existed for the officer to determine whether the driver or occupants were in need of assistance short of effectuating a seizure and the failure to exercise those options under these facts should preclude any evidence obtained as a result of those actions.

Conclusion

Upholding the District Court decision would allow law enforcement to legally seize someone for stopping on the side of the road without any indicia that they were in need of assistance contrary to established precedent. Thus, in order to preserve the integrity of the Fourth Amendment and Article 1, Section 8 of the Iowa Constitution, the District Court's decision must be reversed because the State has failed to meet their burden of establishing that a bona fide community care taking existed and/or that the public interest in effectuating a seizure under these facts was overcome by the intrusion upon Mr. Coffman's right to be free from unreasonable searches and seizures under both the United States and Iowa Constitutions.

Request for Oral Argument

Request is hereby made that, upon submission of this case, counsel for Appellee 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 8,475 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1)

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/s/ *Matthew Lindholm* April 20, 2017
Matthew T. Lindholm Date

Attorney's Cost Certificate

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

Respectfully Submitted,

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