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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 IOWA DISTRICT COURT
FOR STORY COUNTY
THE HONORABLE JAMES B. MALLOY, JUDGE

APPELLEE'S BRIEF

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ROUTING STATEMENT

Defendant asserts this case presents a substantial issue of first impression regarding the public servant function of the community caretaker warrant exception. Def.'s Br. at 4 (citing Iowa R. App. P. 6.1101(2)(c)). But Iowa courts routinely apply the community caretaker exception—including the public servant function—to warrantless seizures of motorists. *See, e.g.*, *State v. Mitchell*, 498 N.W.2d 691, 694 (Iowa 1993). Defendant offers no compelling reason to change course. Moreover, Defendant failed to preserve his argument that the Iowa Constitution provides more protection than the United States Constitution here. As such, transfer to the Court of Appeals is appropriate. Iowa R. App. P. 6.1101(2), (3).

STATEMENT OF THE CASE

Nature of the Case

Defendant Terry Lee Coffman appeals the denial of his motion to suppress evidence, denial of his Rule 1.904(2) "motion to reconsider and/or reopen the record and request for expanding findings … and conclusions," and his subsequent conviction following

a trial on the minutes in which the district court found him guilty of operating while intoxicated, first offense. On appeal, Defendant argues that the district court should have granted his motion to suppress because he was seized in violation of the United States and the Iowa Constitutions.

Course of Proceedings

Defendant was charged by trial information of Operating While Intoxicated ("OWI"), First Offense, in violation of Iowa Code section 321J.2 (2015). Trial Info. (6/16/2016) at 1; App. 1. He moved to suppress evidence arguing Officer Nicholas Hochberger seized him in violation of the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Iowa Constitution. Mot. Suppress (8/25/2016) at 2; App. 4. The court held a hearing on the motion to suppress at which Officer Hochberger testified, the State offered exhibits, and counsel presented argument. Hr'g Tr. (9/9/2016) at 2, 20-26; App. 9, 27-33. In neither his motion nor at oral argument did Defendant argue that the Iowa Constitution provides greater protection than the United States Constitution. *See generally* Mot. to Suppress; App. 3-4; Br. in Supp. Mot. to Suppress (9/9/2016); App. 74-78; Hr'g Tr. (9/9/2016) at 23-26; App. 30-33; *see also* Mot.

Reconsider (9/12/2016) at 13; App. 53. The court denied the motion holding that the community caretaker exception justified the seizure. Hr'g Tr. at 28; App. 35; Order (9/12/2016); App. 39.

Defendant moved the court to "reconsider and/or reopen the record and request for expanded findings of fact and conclusions of law" under Iowa Rule of Civil Procedure 1.904(2) ("Motion to Reconsider"). Mot. Reconsider (9/12/2016) at 1 (capitalization removed); App. 41. For the first time Defendant argued that the Iowa Constitution should provide more protection from warrantless seizures than the United States Constitution. *Id.* at 13-14; App. 53-54.

The district court denied the motion. Order (9/14/2016); App. 64. It concluded that "there was no violation of the defendant's rights under both the Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Iowa Constitution." *Id.* at 3; App. 64. In its order, the court neither explicitly acknowledged Defendant's Iowa-Constitution-specific argument nor provided separate analysis under the Iowa Constitution. Order (9/14/2016); App. 62-64.

Defendant agreed to a trial on the minutes, at which the court convicted him of OWI, first offense. J. Entry (10/12/2016); App. 69-

70. Defendant timely appealed. Notice of Appeal (10/12/2016); App. 72.

Facts

At 1:08 a.m. on May 22, 2016, Defendant sat drunk in the driver's seat of a car with his wife beside him. Mins. Of Test. (6/16/2016) at 2; App. 80; Attach. to Mins. of Test. (6/16/2016) at 6-7; App. 87-88. His car stood within two feet of the traffic lane on the shoulder of 320th Street, a dark rural road. Hr'g Tr. (9/9/2016) at 6; App. 13; Order (9/14/2016) at 1; App. 62; *see* Video; App. 6.

Officer Hochberger—uniformed and driving a marked police cruiser—first saw the car from a half to quarter mile away. Hr'g Tr. (9/9/2016) at 5-6, 7; App. 12-13, 14. He observed the car on the shoulder, not moving, with its brake lights on. *Id.* at 6-7; App. 13-14. Concerned that someone in the car needed help, Officer Hochberger decided to check on the car. *Id.* at 8, 9, 15; App. 15-16, 22.

Officer Hochberger activated his flashing lights as he stopped behind Defendant's car. *Id.* at 10-11, 17; App. 17-18, 24. Officer Hochberger testified he activated those lights to alert any oncoming traffic to his presence while he checked on the car and to let anyone in the car know he was a police officer. *Id.* at 10; App. 17. Within eight

seconds of stopping Officer Hochberger exited his car and approached Defendant's car. Video at 0:35 to 0:43; App. 6. Upon reaching that car, Officer Hochberger immediately asked "everyone ok tonight" and why had Defendant parked on the shoulder. *Id.* at 0:50 to 1:04; App. 6. As a result of this conversation, Defendant was charged with OWI, first offence. Trial Info. (6/16/2016) at 1; App. 1.

ARGUMENT

I. The District Court Correctly Denied Defendant's Motion to Suppress Because Officer Hochberger Properly Seized Him Under the Community Caretaker Exception.

Preservation of Error

Defendant preserved his argument that his seizure violated the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Iowa Constitution by moving to suppress, moving to reconsider, and obtaining an adverse ruling. Mot. to Suppress (8/25/2016); App. 3-5; Hr'g Tr. (9/9/2016); App. 8-38; Mot. to Reconsider (9/12/2016); App. 41-61; Order (9/14/2016); App. 62-65. But Defendant failed to preserve his argument that the Iowa Constitution provides greater protection from seizures than the Fourth Amendment for two reasons. First, he failed to raise that issue until his motion to reconsider. Mot. to Reconsider (9/12/2016) at 13;

App. 53. Second, the district court never ruled on the Iowa-specific argument. *See generally* Order (9/14/2016); App. 62-65.

To begin, raising an argument for the first time in a Rule 1.904(2) motion is insufficient to preserve error on the new argument. *See Meier v. Senecaut*, 641 N.W.2d 532, 539 (Iowa 2002) (Rule 1.904(2) motion preserves error when a litigant has *previously* raised a claim, but district court fails to rule on it). Indeed, "[c]laims cannot be raised for the first time in a rule 1.904(2) motion." *State v. Rowley*, No. 05-0691, 2006 WL 623640, at *2 (Iowa Ct. App. Mar. 15, 2006) (citing *Meier*, 641 N.W.2d at 540). That, however, is what Defendant did here. And Defendant declined to raise the Iowa-specific argument in his motion to suppress for tactical reasons. Mot. to Reconsider (9/12/2016) at 13 (Defendant's counsel "did not believe that it was necessary to ask the court to distinguish the Fourth Amendment protections from those under the Iowa Constitution" in the motion to suppress because of "the similarities between" this case and existing caselaw); App. 53.

Because it lacked an argument that the Iowa Constitution provides greater protection than the United States Constitution, Defendant's motion to suppress also failed to preserve his Iowa-

specific argument. Absent an Iowa-specific argument, Iowa courts apply overlapping provisions of the Iowa and United States Constitutions the same, *King v. State*, 797 N.W.2d 565, 571 (Iowa 2011), though courts can apply the overlapping Iowa provision with teeth. *State v. Bruegger*, 773 N.W.2d 862, 883 (Iowa 2009); *but see State v. Coleman*, 890 N.W.2d 284 (Iowa 2017) (adopting a more stringent standard under the Iowa Constitution when the defendant cited neither the Iowa nor United States Constitutions and the State made no error preservation argument).

Next, even if Defendant presented an Iowa-specific argument, the district court did not rule on it. *See generally* Order (9/14/2016); App. 62-65. In its order denying the Motion to Reconsider, the district court neither recognized an Iowa-specific argument nor provided an Iowa-specific analysis. C*f. Lamasters v. State*, 821 N.W.2d 856, 864-65 (Iowa 2012) (finding error preserved on claim when district court specifically noted the claim in its ruling but failed to analyze it). When a district court does not decide an issue, it is unpreserved. *Id.* at 862.

Defendant failed to preserve error on his Iowa-Constitution-specific argument. This Court should decline to consider it.

Standard of Review

A challenge to the denial of a motion to suppress on federal or state constitutional grounds is reviewed de novo. *State v. Pals*, 805 N.W.2d 767, 771 (Iowa 2011). This review requires independently evaluating the totality of the circumstances as shown by the entire record. *Id.* (quoting *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001)). While this Court gives deference to the district court's factual findings, it is not bound by them. *Id.* (citing *State v. Lane*, 726 N.W.2d 371, 377 (Iowa 2007)).

Merits

"The Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution protect persons from unreasonable searches and seizures." *State v. Reinders*, 690 N.W.2d 78, 81 (Iowa 2004) (internal quotation marks and citation omitted). "The search and seizure clause of the Iowa Constitution is substantially identical" to the federal clause. *State v. Kreps*, 650 N.W.2d 636, 640 (Iowa 2002); *see also* Iowa Const. art. I, sec. 8. Warrantless seizures are generally illegal unless they fall within an exception to the warrant requirement. *State v. Crawford*, 659

N.W.2d 537, 541 (Iowa 2003) (citing *State v. Carlson*, 548 N.W.2d 138, 140 (Iowa 1996)).

The community caretaker doctrine is one such exception and exists because police engage in many non-investigatory caretaking functions. *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973); *see also State v. Kurth*, 813 N.W.2d 270, 275 (Iowa 2012). It applies when: (1) there is a seizure under the Fourth Amendment, (2) the police action is bona fide community caretaking activity, and (3) the public need and interest outweigh the intrusion upon the citizen's privacy. *Crawford*, 659 N.W.2d at 543 (citing *State v. Anderson*, 417 N.W.2d 411, 414 (Wis. Ct. App. 1987)). "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 State conceded that Officer Hochberger seized Defendant. Hr'g Tr. (9/9/2016) at 21; App. 28. Because Officer Hochberger engaged in "bona fide … caretak[ing] activity" and the "public need … outweigh[ed] the intrusion upon [Defendant's] privacy," the seizure did not violate Defendant's constitutional rights. *See Crawford*, 659 N.W.2d at 543.

A. Officer Hochberger engaged in bona fide caretaking when he checked on Defendant's car.

The community caretaker doctrine's second element "encompasses three separate doctrines: (1) the emergency aid doctrine, (2) the automobile impoundment/inventory doctrine, and (3) the 'public servant' exception." *Kurth*, 813 N.W.2d at 274 (quoting *Crawford*, 659 N.W.2d at 541). Only the public servant and emergency aid doctrines apply here.

Whether an officer engaged in bona fide community caretaking activity depends on the facts available to the officer at the moment of seizure. *Crawford*, 659 N.W.2d at 543. If these facts would lead a reasonable person to believe an emergency existed or an individual needed general assistance, the stop falls within the community caretaking exception. *Id.*

1. Officer Hochberger properly acted as a "public servant" when he checked Defendant's car parked on the shoulder at 1:08 a.m.

As Officer Hochberger drove down 320th Street—a dark rural road—at 1:08 a.m., he saw Defendant's car stopped on the shoulder two feet from the traffic lane. Video; App. 6; Hr'g Tr. at 8, 26; App. 15, 33. These facts would cause a reasonable person to believe assistance was needed.

Relatively few cars stop on the shoulder, so a reasonable person would believe it appropriate to check if a stopped car's occupants need assistance. Indeed, Officer Hochberger testified he sees five to fifteen cars stopped on the road per week on his six shifts, or 0.83 to 2.5 per day. Hr'g Tr. (9/9/2016) at 9; App. 16. As the district court observed, "[a] stopped motorist … could need officer assistance for many possible … reasons [including] car trouble, fatigue, illness, or something else." Order (9/14/2016) at 2; App. 63. The early morning hour of the stop further contributes to a reasonable person believing assistance was needed. *See e.g.*, *Commonwealth v. Evans*, 764 N.E.2d 841, 844 (Mass. 2002) (justifying, in part, community caretaking stop of car in breakdown lane due to late hour—11:30 p.m.); *State v. Anderson*, 362 P.3d 1232, 1240 (Utah 2015) (observing risk to stopped motorist was heightened due to darkness and late hour—just before 10:00 p.m.).

Officer Hochberger's actions upon stopping confirm he in fact worried about the motorists' safety suggesting a reasonable person would too. He immediately exited his cruiser and asked Defendant is "everyone ok tonight" and why are you stopped on the shoulder. Video; App. 6. *Cf. State v. Sellers*, No. 14-0521, 2015 WL 1055087, *4

(Iowa Ct. App. Mar. 11, 2015) (observing officer's stated purpose—that motorist might need medical assistance—for seizing motorist stopped on shoulder was incongruent with officer's actions of first running license plate).

In addition to checking on the safety of the car's occupants, a reasonable person would believe an officer should check a car stopped within two feet of a dark road at 1:08 a.m. for the public's safety. As the district court observed, by parking so near the road's travelled portion, the car posed "safety concerns for all motorists." Order (9/14/2016) at 2; App. 63. And the community caretaker doctrine allows stops to preserve public safety. *State v. Tague*, 676 N.W.2d 197, 204 (Iowa 2004) (citing *Mitchell*, 498 N.W.2d at 696-94).

Defendant points to *Sellers* and argues that it both controls this case and compels suppression. 2015 WL 1055087; Def.'s Br. at 15. In *Sellers*, an officer observed a car stopped on the opposite side of the highway early in the morning. *Id.* at 1. After turning around, the officer stopped behind the car; turned on his spotlight, but not overhead lights; and ran the car's license plates. *Id.* When the driver activated her blinker and began to merge, the officer turned on his overhead lights seizing her. *Id.* The court rejected the officer's

attempt to justify his actions under the public servant prong of the community caretaker doctrine. By signaling to merge, the driver "indicated she did not require or expect any assistance from whoever had stopped behind her." *Id.* at 4.

Contrary to Defendant's suggestion, *Sellers* does not require suppression; rather, it suggests Officer Hochberger acted appropriately. First, Officer Hochberger had no indication everyone in the car was alright. Indeed, Defendant never signaled to return to the road or otherwise communicated he needed no help. As the court suggested in *Sellers*, had the officer immediately seized the driver upon stopping, rather than when she tried to return to the roadway, that stop may well have been justified. *Id.* That is what Officer Hochberger did here. Second, unlike in *Sellers*, Officer Hochberger's actions—immediately checking the occupants' wellbeing—align with the stop's justification. *Cf. id.* at 4, 5.

Out-of-state cases have authorized seizures under the community caretaker doctrine under nearly identical circumstances to those here. For example, in *People v. Laake*, an officer seized a car parked on the shoulder of a road at 3:16 a.m. with its break lights on. 809 N.E.2d 769, 770-71 (Ill. Ct. App. 2004). The court held the

community caretaker exception applied because the officer's purpose to check the driver's welfare was designed to ensure public safety. *Id.* at 772; *see also State v. Caswell*, Case No. 2011-0589, 2012 WL 12830410 (N.H. Nov. 21, 2012) (upholding denial of suppression motion on community caretaker grounds when a car stopped in the breakdown lane at 1:40 a.m. on a dark, moderately travelled roadway, then turned off its lights); *Evans*, 764 N.E.2d at 844 (affirming denial of motion to suppress on community caretaker grounds when officer stopped behind a car stopped in breakdown lane at 11:30 p.m. with its right blinker on).

Under the circumstances presented to Officer Hochberger, a reasonable person would agree stopping to check if Defendant needed general assistance was reasonable.

2. Officer Hochberger reasonably believed Defendant needed emergency aid when he stopped behind Defendant's car.

These facts also support a reasonable person concluding that Defendant needed emergency aid. Again, Officer Hochberger saw a car stopped, break lights engaged, feet from the road at 1:08 a.m. A reasonable person could believe an emergency existed in these circumstances. *See Ullom v. Miller*, 705 S.E.2d 111, 123 (W.V. 2010)

(holding that the community caretaker exception justified an officer seizing a driver parked "just off the road" and blocking a gate to a dirt road at dusk with parking lights on because a reasonable officer would have concluded motorist needed immediate help).

Defendant observes that in *Sellers* the court of appeals found emergency aid did not justify the stop. Def.'s Br. at 11-12. But here Officer Hochberger did not prevent Defendant from returning to the road, thus affecting a far less intrusive seizure. *Sellers*, 2015 WL 1055087, at *4. A less intrusive seizure requires a less robust justification. *See Crawford*, 659 N.W.2d at 543 (instructing courts to balance public need for stop against the nature of intrusion). Officer Hochberger was thus justified in checking on Defendant and his wife to ensure they needed no emergency aid.

As the district court observed, Officer Hochberger saw a car in circumstances consistent with those in which someone is experiencing "medical issues." Order (9/14/2016) at 1; App. 62. Had Defendant been having a heart attack, for example, "we [would] criticize the officer if he [ignored the stopped car]." Hr'g Tr. (9/9/2016) at 27; App. 34. Indeed, Officer Hochberger acted in his non-investigatory police function to vindicate the State's interest in

public safety by ensuring Defendant was not experiencing an emergency. *See Tague*, 676 N.W.2d at 204 (Iowa "charges local police officers with duties that go beyond investigating and enforcing the criminal law[]"). Officer Hochberger acted reasonably in doing so.

B. The public need and interest in the stop outweighed its limited intrusion on Defendant.

The public interest served by seizing the Defendant outweighs its intrusion for three reasons. First, the intrusion was minor. Second, and relatedly, Officer Hochberger's actions comported with his rationale for seizing Defendant and could not have been accomplished less intrusively. Third, the public interest in safety justified the stop.

First, the intrusion on Defendant was minor because Defendant had already stopped, and Officer Hochberger immediately asked if Defendant was alright. Video; App. 6. Detaining a stopped car is less intrusive than pulling a car over and requires a less compelling public interest. *Kurth*, 813 N.W.2d at 280. And the interaction would have been brief had Defendant not been intoxicated because Officer Hochberger testified he leaves when drivers need no assistance. Hr'g Tr. at 11; App. 18; *State v. Rave*, No. 09-0415, 2009 WL 3381520, at *5 (Iowa Ct. App. Oct. 21, 2009); *contra Sellers*, 2015 WL 1055087, at

*5 n.7. Similarly, Officer Hochberger did not physically block Defendant in or otherwise engage in aggressive behavior. *Cf. Kurth*, 813 N.W.2d at 280 (observing that officers had no need to block in defendant's parked car).

Second, Officer Hochberger limited his actions to his rationale for stopping Defendant. Iowa courts find that when an officer's conduct comports with the community caretaking justification for the seizure, the seizure is more likely to pass muster. *Compare Rave*, 2009 WL 3381520, at *5 (finding intrusion to driver's privacy minimal when officer stopped driver because his headlights being off endangered pedestrians and officer immediately told driver to turn headlights on), *with Sellers*, 2015 WL 1055087, at *4 (observing that officer's running license plates did not comport with his ostensible purpose for the stop—driver safety—undermining the stop's validity). Here, Officer Hochberger stopped to check on the safety of the car's occupants and immediately inquired about it thereby diminishing the intrusion. Video; App. 6; Hr'g Tr. (9/9/2016) at 8, 9, 27; App. 15, 16, 34.

Similarly, Officer Hochberger could not have completed his safety check in a less intrusive manner. *See Kurth*, 813 N.W.2d at 278

(officer may do no more than reasonably necessary to determine if assistance is needed). Defendant suggests that Officer Hochberger could have driven by Defendant's car to observe it, stopped next to the car, or activated different lights. Def.'s Br. at 21. But when Officer Hochberger saw Defendant's car, it was parked on the shoulder of a dark road. Video; App. 6. Driving by without illuminating the car would have been uncertain to reveal whether an issue existed. Stopping next to Defendant—in the traffic lane—was an equally poor option as it obstructed the road. And while Officer Hochberger's cruiser had lights other than the overhead flashers, he used his overhead flashers for his own and other drivers' safety and to alert those in Defendant's car a police officer—not a random person—had stopped behind them. Hr'g Tr. at 10; App. 17. The district court agreed that by using his flashing lights Officer Hochberger employed the least restrictive means of checking on Defendant. *Id.* at 30; App. 37.

Third, the seizure vindicated the legitimate public interest in both the Defendant's and his wife's safety, as well as that of other drivers. *See Mitchell*, 498 N.W.2d at 694 ("State has a valid interest in the safety of its citizens on its roads and highways."). As the district

court acknowledged, Defendant's conduct suggested he may be experiencing medical issues. Order (9/14/2016) at 1; App. 62. The public expects officers to confirm that citizens possibly in distress do not need help. Hr'g Tr. at 27; App. 34.

Moreover, by parking on the shoulder early in the morning, Defendant's car presented a hazard to other motorists. *See Kurth*, 813 N.W.2d at 281 (reasoning car in parking lot posed less danger than car on road's shoulder). Officer Hochberger could check to make sure nothing was needed to alleviate that hazard.

Balancing the public interests against the intrusion on the Defendant, the public interest prevails. The public has a weighty interest in ensuring motorist safety, while Defendant experienced a minor intrusion. Officer Hochberger engaged in bona fide community caretaking conduct when he confirmed a car stopped early in the morning on a rural road needed no assistance: the community caretaker doctrine authorized this seizure.

C. The Iowa Constitution should not require suppressing evidence obtained under the public servant exception.

As explained, Defendant failed to preserve his argument that the Iowa Constitution requires suppressing evidence obtained under

the public servant doctrine of the community caretaker exception. If the Court addresses this argument, however, it should reject it.

Defendant observes that Iowa courts can interpret the Iowa Constitution to provide greater protection than the United States Constitution. Def.'s Br. at 22. While this general observation is accurate, Defendant has offered insufficient reason to deviate from existing law. And his belief that the exception should not apply to the facts here fails to explain why this Court should abandon the exception altogether.

Turning to his arguments, Defendant observes that Iowa courts have produced little appellate precedent on the public servant exception. Def.'s Br. at 25. As such, says Defendant, eliminating the doctrine would be easy to reconcile with existing jurisprudence. *Id.* But Iowa courts have recognized and applied the public servant exception to the warrant requirement. *Crawford*, 659 N.W.2d at 542; *Mitchell*, 498 N.W.2d at 694; *Rave*, 2009 WL 3381520. Jettisoning the requirement would conflict with existing precedent.

Next, Defendant suggests that the public servant exception is "ripe for abuse" and could subject "innocent people to harassment." Def.'s Br. at 24-25. But his observation that little Iowa caselaw exists

using the exception belies these concerns. Def.'s Br. at 25. The relative few cases on the public servant exception confirm that the State uses the exception to justify seizures only when appropriate and courts apply it cautiously. Indeed, Defendant offers no evidence that the exception is abused.

Similarly, Defendant offers no proof that the exception subjects people to harassment. Def.'s Br. at 25. Taking this case as an example, Officer Hochberger stopped behind Defendant's parked car to confirm Defendant's and his wife's safety. Officer Hochberger asked whether Defendant and his wife were "ok." Video; App. 6. Far from harassing Defendant, Officer Hochberger made sure Defendant and his wife did not need help.

Defendant also objects that the reasonableness standard is amorphous. Def.'s Br. at 24. But Iowa's three part test under the doctrine provides sufficient restriction and guidance to prevent abuse. For the doctrine to apply, an officer must be performing bona fide community caretaking activity as shown by "specific and articulable facts" available to the officer at the time of the stop. *Kurth*, 813 N.W.2d at 277 (citing *Crawford*, 659 N.W.2d at 542). And courts

must confirm that the public interest and need outweigh the State's intrusion on defendants' privacy before allowing a seizure. *Id.* at 280.

Courts apply these requirements rigorously, carefully considering the facts. In *Kurth*, for instance, the Iowa Supreme Court invalidated a seizure when the officer claimed he seized the defendant to confirm defendant's car was safe to drive after the officer heard the defendant hit a road sign. 813 N.W.2d at 278. But because the officer followed the defendant until defendant parked in a parking lot, the officer's safety purpose was insufficient to justify the seizure as the officer's observations confirmed defendant's car was operable. *Id.*; *see also Sellers*, 2015 WL 1055087, *4, 5 (seizing defendant to check on her wellbeing because she was stopped on shoulder unjustified under public servant exception because defendant's attempt to drive off showed she needed no assistance).

Moreover, Defendant advocates for retaining the emergency aid exception to the warrant requirement, which uses the same "amorphous" reasonableness standard. Def.'s Br. at 23-24. Defendant, however, offers no reason why a reasonableness standard provides sufficient protection to Iowans under one doctrine of the community caretaker exception but not another.

Finally, Defendant points to other jurisdictions, claiming they disallow the public servant exception. Def.'s Br. at 26. The particular jurisdictions he cites, however, actually recognize the public servant exception. *See State v. Anderson*, 362 P.3d 1232 (Utah 2015) (abandoning rule that police could only initiate community caretaker stops under threats to "life or limb" and instead requiring courts to balance a stop's intrusiveness against the public interest in the stop, including a possibility a stopped motorist needs aid); *Commonwealth v. Evans*, 764 N.E.2d 841, 844 (Mass. 2002) (recognizing community caretaker exception when police checked whether a stopped motorist needed assistance). The Iowa Supreme Court has recognized that many jurisdictions support stops for safety reasons. *See Mitchell*, 498 N.W.2d at 694(citing *State v. Pinkham*, 565 A.2d 318, 319 (Me. 1989) (safety reasons alone could justify a stop); *State v. Harrison*, 533 P.2d 1143, 1144 (Ariz. 1975) (holding the stop of a vehicle whose tire was "bouncing" was an appropriate exercise of a police officer's public safety duties); *State v. Oxley*, 503 A.2d 756, 759 (N.H. 1985) (finding an officer was justified in stopping a vehicle to ensure that inadequately secured furniture did not fall from the back of the vehicle onto the highway and present a danger to other drivers)).

Other jurisdictions authorize such stops as well. *See, e.g.*, *State v. McCormick*, 494 S.W.3d 673, 687 (Tenn. 2016) (community caretaker doctrine authorizes seizures when there is a "possibility of a person in need of assistance or the existence of a potential threat to public safety").

Policy reasons support retaining the exemption. Police serve important non-investigatory functions. *See Kurth*, 813 N.W.2d at 275 (quoting *State v. Tague*, 676 N.W.2d 197, 204 (Iowa 2004) ("We acknowledged that the 'State charges local police officers with duties that go beyond investigating and enforcing the criminal laws'")). These functions include protecting public safety. *See Mitchell*, 498 N.W.2d at 694 (recognizing police function to give aid to those in distress) (citing *State v. Kersh*, 313 N.W.2d 566, 569 (Iowa 1981)). By rejecting the public servant doctrine, police would lose a tool used to perform their non-investigatory duties.

Similarly, the public servant exception allows police to assess potentially dangerous situations before they spiral into full blown emergencies. By removing the public servant exception, police would be forced to react to situations that have already progressed to emergencies, such that aid is immediately needed.

If the Court reaches this unpreserved issue, it should decline Defendant's invitation to eliminate the public servant doctrine.

CONCLUSION

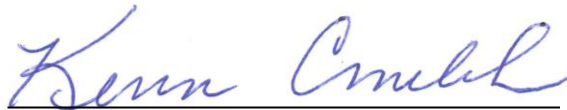
Officer Hochberger obtained evidence leading to Defendant's OWI conviction during a lawful seizure under the community caretaker doctrine. This Court should affirm.

REQUEST FOR NONORAL SUBMISSION

This case should be set for nonoral submission. In the event argument is scheduled, the State requests to be heard.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa



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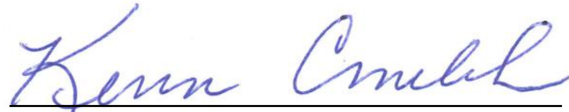

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