

IN THE SUPREME COURT OF IOWA

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SUPREME COURT NO. 18-2222

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STATE OF IOWA,  
Plaintiff- Appellee  
vs.

JEFFREY ALAN MEYERS  
Defendant- Appellant

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APPEAL FROM THE DISTRICT COURT FOR GUTHRIE COUNTY  
THE HONORABLE PAUL R. HUSCHER (SUPPRESSION HEARING)  
THE HONORABLE MICHAEL JACOBSEN (TRIAL & SENTENCING)

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APPELLANT'S FINAL BRIEF  
AND  
REQUEST FOR ORAL ARGUMENT

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**CERTIFICATE OF FILING**

I, Robert G. Rehkemper, 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 June 21, 2019, by filing it with the Court's electronic document management system.



Robert G. Rehkemper

June 21, 2019

Date

**CERTIFICATE OF SERVICE**

I, Robert G. Rehkemper, hereby certify that on June 21, 2019, I served a copy of the attached brief on all other parties to this appeal by filing it with the Court's electronic document management system.



Robert G. Rehkemper

June 21, 2019

Date

**CERTIFICATE OF SERVICE UPON THE DEFENDANT**

I, Robert G. Rehkemper, hereby certify that on June 21, 2019, I served a copy of Defendant's Final Brief, upon the Defendant-Appellant via electronic mail pursuant to his previously provided written authorization to receive documents and/or court notifications via electronic mail.



Robert G. Rehkemper

June 21, 2019

Date

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## STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

### **I. WHETHER LAKE PANORAMA IS A PRIVATELY OWNED LAKE THEREBY EXEMPTING VESSELS ON ITS WATERS FROM THE BLUE LIGHT PROHIBITION OF IOWA CODE SECTION 462A.12(4).**

#### **Iowa Supreme Court**

*Am. Dog Owners Ass'n, Inc., v. City of Des Moines*, 469 N.W.2d 416 (Iowa 1991)

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## **II. WHETHER REASONABLE SUSPICION JUSTIFIED THE STOP OF MEYERS' VESSEL.**

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#### **Iowa Supreme Court**

*State v. Kreps*, 650 N.W.2d 636 (Iowa 2002)

*State v. Tague*, 676 N.W.2d 197 (Iowa 2004)

*State v. Pettijohn*, 899 N.W.2d 1 (Iowa 2017)

## **STATEMENT OF THE CASE**

### **Nature of the Case**

Iowa Department of Natural Resource Conservation Officers stopped a vessel being operated by Appellant, Jeffrey Meyers, on Lake Panorama for displaying a blue light. The seizing officer believed that the display of a blue light on a vessel violated Iowa Code section 462A.12(4). This section prohibits a vessel from displaying or reflecting a blue light on “waters of this state under the jurisdiction of the conservation commission.” Privately owned lakes are statutorily excluded from the definition of “waters of this state under the jurisdiction of the commission”. Iowa Code § 462A.2(31). Lake Panorama is a “privately owned lake” and therefore the blue light prohibition of section 462A.12(4) did not apply. Consequently, the stop of Meyers vessel violated the Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution.

### **Course of Proceedings**

Jeffrey Meyers was charged by way of Trial Information filed on August 13, 2018, with the offenses of: Count I – Boating While Intoxicated, in violation of Iowa Code section 462A.14(2)(a); and Counts II - V – Child Endangerment, in violation of Iowa Code sections 726.6(1)(a), 726.6(3) and 726.6(7). Trial Information; App. A004-A007. The charges arose as a result of a stop of a pontoon vessel that Meyers was operating on July 7, 2018. Trial Information;

Minutes of Testimony, pp. 1-4; App. A004-A012. Meyers filed a motion to suppress evidence on September 25, 2018, alleging that the stop of his vessel violated the Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution. Motion to Suppress; App. A013-A016. Hearing was held on November 6, 2018, before District Court Judge, Paul Huscher. Judge Huscher entered an order on November 9, 2018, denying said motion. Ruling on Motion to Suppress Evidence; App. A032-A040.

Meyers waived his right to a jury trial and stipulated to a trial on the minutes of testimony on December 21, 2018, 2018. Written Waiver of Jury Trial and Stipulation to Trial on the Minutes of Testimony. The Honorable Michael Jacobsen accepted said waiver, found Meyers guilty of Boating While Intoxicated, and sentenced Meyers on December 24, 2018. Acceptance of Stipulation, Findings of Fact, Conclusions of Law; Judgment and Sentence; App. A045-A047. Notice of Appeal was filed that same day. Notice of Appeal; App. A050-A051. Pursuant to the agreement of the parties, Counts II through V were dismissed. Order Dismissing at Application; App. A048-A049.

### **Statement of Facts**

On the evening of July 7, 2018, Iowa Department of Natural Resource Conservation Officers Arnold and Spece were conducting a boating “saturation patrol” on Lake Panorama for the July Fourth holiday weekend. Tr. 9-11. The

officers accessed the lake with permission from the Lake Panorama Association via a boat slip that the Department of Natural Resources rented from the Association. Tr. 19. Following the conclusion of the fireworks show, at approximately 10:45 p.m., the officers observed a pontoon vessel being operated in a safe, responsible and lawful manner. Tr. 11. However, glowing blue “accent” lights were observed displayed at the base of the pontoon. Tr. 11, 18. The keen-sighted officers believed that the display of a blue light of any kind upon a vessel, violated Iowa Code section 462A.12(4). Tr. 12-13. Consequently, they performed a stop of the vessel. Officer Arnold could not recall where specifically in the lake the stop took place, but at the hearing, he initially believed it to be somewhere toward the middle of the lake. Tr. 12-13, Exhibit 1.

The officers stopped the vessel and informed Meyers that he could not display a blue light on a vessel. Tr. 14. The officers also requested to perform a suspicionless safety inspection. Tr. 14. Meyers submitted to the inspection which revealed that the pontoon was in complete compliance with the safety regulations and all children under the age of thirteen aboard the vessel were wearing life jackets. Tr. 15. However, during the inspection, Officer Arnold made observations of Meyers that lead him to believe he was possibly intoxicated. Tr. 15-16. An investigation was subsequently undertaken which resulted in Meyers being arrested for boating while intoxicated. Tr. 16-17. Following his arrest,

Meyers submitted to chemical testing which indicated an alcohol concentration of .173. Tr. 16-17; Minutes of Testimony, p. 6; App. A008-A012.

The general nature and public accessibility of Lake Panorama is of importance to the resolution of the issue being raised in this appeal. Lake Panorama is a privately owned lake, not listed as a public waterway by the Department of Natural Resources.<sup>1</sup> There is no visible current at the surface of the lake waters. Tr. 34. All of the land around Lake Panorama is privately owned. Tr. 20, 35. Meyers himself, owns a lakefront home on Lake Panorama, located at 6922 Bumps Bend which he purchased in the Fall of 2012. Tr. 43. As part of his ownership of the property, Meyers was required to join the Lake Panorama Association (hereafter “LPA”). Tr. 44.

The LPA owns the ground underneath the water of Lake Panorama, common areas, boat ramp and dam. Tr. 20-21, 35, 44-45. They provide owners with a map setting forth the boundaries of the property associated with the LPA. Tr. 44-45, Exhibit A; App. A017. The LPA boasts “Lake Panorama is the largest private lake in Iowa.”<sup>2</sup> Tr. 44. Signs are erected at the marina, boat ramp and other areas

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<sup>1</sup> <https://www.iowadnr.gov/Fishing/Where-to-Fish/Lakes-Ponds-Reservoirs>

<sup>2</sup> <http://www.lakepanorama.org/home.asp>

around the lake, notifying the public that the lake is “private.” Tr. 19; Exhibit F; App. A030.



Access to the common areas and the lake is restricted by the LPA. Tr. 20-21, 35, 44-45. The general public is not permitted to use the lake. Tr. 48. One must own property on the lake and be a member of the LPA to operate a vessel on that body of water. Tr. 46; Exhibit B, p. 3; App. A018-A026. In fact, in order to use the lake, vessels must be registered with the LPA and display stickers indicating the validity of said registration. Tr. 47; Exhibit B, p.3; App. A018-A026. At the southern end of Lake Panorama is a structural dam used to create

the lake. At the northernmost limits of Lake Panorama, the LPA has erected a floating “debris trap” which also restricts access from the Middle Racoon River. Tr. 49-50; Exhibits C, D, E; App. A027-A029. Whether or not access could have been made into Lake Panorama from the Middle Racoon River on the evening of the stop was never established at the hearing on Meyers’ motion to suppress evidence.

The LPA also regulates the physical size, motor, and horsepower of any vessel operated on the waters of Lake Panorama. Tr. 47. In fact, many of the restrictions imposed by the LPA relating to boating on Lake Panorama are more restrictive than regulations applicable to public waters. Exhibit B, pp. 3-4. The LPA also maintains the authority to restrict boating on the waters of Lake Panorama when conditions warrant. Exhibit B, p. 2. There is but one boat ramp on Lake Panorama which is owned and controlled by the LPA. Tr. 20-21, 35, 44-45. The rules, regulations and restriction on access are enforced by a private safety patrol under the authority of the LPA. Tr. 20; Exhibit B, p. 2; App. A018-A026.

### **Routing Statement**

Retention by the Iowa Supreme Court is appropriate as this case requires resolution of an issue of first impression and broad public importance, namely interpretation and application of the legal definition of a “privately owned lake” under Iowa Code section 462A.12(4). Iowa R. App. P. 6.1101(2)(c), (d) & (f).

## LEGAL ARGUMENT

### **I. LAKE PANORAMA IS A PRIVATELY OWNED LAKE THEREBY EXEMPTING VESSELS ON ITS WATERS FROM THE BLUE LIGHT PROHIBITION OF IOWA CODE SECTION 462A.12(4). AS SUCH, THE STOP OF MEYERS' VESSEL WAS CONDUCTED ABSENT PROBABLE CAUSE AND IN VIOLATION OF THE FOURTH AMENDMENT AND ARTICLE I, SECTION 8 OF THE IOWA CONSTITUTION.**

**Preservation of Error:** Error was preserved by Meyers filing his motion to suppress evidence, receiving an adverse ruling, proceeding to a trial on the minutes of testimony, being found guilty of Boating While Intoxicated, and timely filing his notice of appeal.

**Standard of Review:** Meyers argues the stop of his vessel violated the Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution. As such, the standard of review is *de novo*. *State v. Pettijohn*, 899 N.W.2d 1, 12 (Iowa 2017). To the extent a constitutional claim raises issues of statutory interpretation, the court's review is for corrections of errors at law. *Id.*

**Argument:** To justify a warrantless stop of a vessel by law enforcement, the State has the burden of proving by a preponderance of the evidence that the officer had probable cause to stop the vessel. *State v. Pettijohn*, 899 N.W.2d 1, 14 (Iowa 2017). "Probable cause exists if the totality of the circumstances as viewed by a reasonable and prudent person would lead that person to believe that a crime has been or is being committed and that the arrestee committed or is committing

it.” *State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004). The State bears the burden of proving by a preponderance of the evidence that the officer had probable cause to seize a citizen pursuant to a traffic stop, or in this case, the stop of a vessel. *State v. Tyler*, 830 N.W.2d 288, 293 (Iowa 2013). If the facts alleged to support a probable cause stop do not constitute an offense, no cause to stop exists. *State v. Malloy*, 453 N.W.2d 243, 245 (Iowa Ct. App. 1990). “When the facts giving rise to an arrest do not constitute an offense, no reasonable cause exists to stop the defendant.” *Id.*

The State attempts to justify the stop of Meyers’ vessel claiming a violation of Iowa Code section 462A.12(4). This section states: “No person shall operate on the *waters of this state under the jurisdiction of the conservation commission* any vessel displaying or reflecting a blue light or flashing blue light unless such vessel is an authorized emergency vessel.” (emphasis added) Iowa Code § 462A.12(4). Thus, based upon the plain language of the statute, the blue light prohibition does not apply upon otherwise navigable waters not under the “jurisdiction of the conservation commission.”

Interestingly, the definition section for chapter 462A does not provide a definition for the phrase “waters of this state under the jurisdiction of the *conservation commission*.” (emphasis added). Instead, it simply defines “[w]aters of this state under the jurisdiction of the commission.” Iowa Code § 462A.2(45).

The “commission” is defined as “the natural resource commission.” Iowa Code § 462A.2(7). No statutory definition exists for the “conservation commission” anywhere in the Code of Iowa.

“The legislature has no power to create offenses by implication.” *State v. Brighi*, 232 Iowa 1087, 1092, 7 N.W.2d 9, 11 (1942). “There can be no constructive offenses.” *Id.* Iowa Code section 462A.12 seeks to create a public offense<sup>3</sup> applicable to navigation of vessels. Statutes defining public offenses are criminal statutes. See *Id.* “Criminal statutes are ... inelastic, and cannot by construction be made to embrace cases plainly without the letter though within the reason and policy of the law.” *State v. Muhlenbruch*, 728 N.W.2d 212, 214 (Iowa 2007); quoting *State v. Lovell*, 23 Iowa 304, 304 (1867). Any doubt as to whether an act falls within the prohibition of the statute must be resolved in favor of the accused. *State v. Hearn*, 797 N.W.2d 577, 583 (Iowa 2011).

Here, section 462A.12(4) limits the offense to “waters of this state under the jurisdiction of the conservation commission” without providing a definition of “conservation commission.” Applying the prohibition against creating a public offense by implication, this statute, as a matter of law, does not as currently written, create an enforceable public offense because it is impossible to know what

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<sup>3</sup> Iowa Code section 701.2 defines public offense as “That which is prohibited by statute and is punishable by fine or imprisonment”

waters are under the jurisdiction of the “conservation commission.” Consequently, Meyers could not have been in violation of section 462A.12(4) and the seizure of his person by way of the stop of his vessel, violated the Fourth Amendment and article I, section 8 of the Iowa Constitution.

Assuming for sake of argument that “waters of this state under the jurisdiction of the conservation commission” is synonymous with “waters of this state under the jurisdiction of the commission,” those waters are statutorily defined as “any navigable waters within the territorial limits of this state, and the marginal river areas adjacent to this state, *exempting only farm ponds and privately owned lakes.*” (emphasis added) Iowa Code §462A.2(45). This section starts out general, by use of the phrase “any navigable waters within the territorial limits of this state”, but then limits the general with the more specific qualifying phrase; “exempting only farm ponds and privately-owned lakes.”

“[W]here general words follow specific words in an enumeration describing the legal subject, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.” *De More by De More v. Dieters*, 334 N.W.2d 734, 738 (Iowa 1983). Thus, while, privately owned lakes and farm ponds may otherwise qualify as “navigable waters” they are specifically excluded from the “waters of this state under the jurisdiction of the commission.” The fact that Lake Panorama is a navigable waterway, therefore,

does not end the analysis. It must then be determined whether this body of water meets the definition of “privately owned lake.”

Iowa Code section 462A.2(31) defines “privately owned lake” as “any lake, located within the boundaries of this state and not subject to federal control covering navigation owned by an individual, group of individuals, or a nonprofit corporation and which is not open to the use of the general public but is used exclusively by the owners and their personal guests.” Iowa Code § 462A.2(31)<sup>4</sup>. The word “lake” is not otherwise defined either by Code or by regulation. In the absence of a legislative definition of a term or a particular meaning in the law, we give words their ordinary meaning. *State v. Kidd*, 562 N.W.2d 764, 765 (Iowa 1997). The dictionary provides a ready source for ascertaining the common an ordinary meaning. *Id.* “Lake” is commonly defined as “a considerable inland body of standing water.” “lake.” *Merriam-Webster.com*. 2019. <https://www.merriam-webster.com/dictionary/lake> (March 8, 2019). Lake Panorama, as the name suggests, is a “considerable inland body of standing water” and is therefore a “lake.”

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<sup>4</sup> Compare to definition of “Publicly owned lake” which “means any constructed or natural lake having a watershed acreage-to-lake surface area ratio of less than 80 to 1 and owned by an Iowa county or municipal government or by the state of Iowa.

As it relates to the portion of the definition stating, “not open to the use of the general public,” Iowa Code section 462A.3A, statutorily limits such waters to “rivers, streams or creeks having definite banks and bed with visible evidence of the flow of water...” Iowa Code § 462A.3A. Lake Panorama is not a river, stream or creek. Furthermore, there is no visible evidence of the flow of water within the main body of the lake. Tr. 34. Thus, Lake Panorama is not “open to the use of the general public.”

The fight in the instant case centers around the portion of the definition of privately-owned lake stating: “used exclusively by the owners and their personal guests.” Meyers advocates for common-sense interpretation of section 462A.2(31) focusing on the ownership of land, general accessibility, objective nature and use of the body water to determine whether, as a general matter, it is intended to be exclusively used by the owners and their personal guests. If that is done, there is no other reasonable conclusion to reach other than Lake Panorama meets the legislatively intended definition of a privately-owned lake.

Lake Panorama is not subject to federal control as the dam is privately owned by the LPA. Tr. 44-45. Lake Panorama is owned by a group of private individuals, specifically, the LPA. Tr. 20-21, 35, 44-45. Finally, Lake Panorama is not open for use by the general public as access to the lake is restricted and limited to registered owners and their personal guests. Tr. 46, 48; Exhibit B, p. 3;

App. A018-A026. Given the plain language of the statute and the specific, objective characteristics of Lake Panorama, the Iowa Attorney General has already rendered its opinion consistent with Meyers' position that Lake Panorama is a privately-owned lake. Hon. George E. O'Malley, No. 70-3-27, 1970 WL 207619 (Iowa A.G.).

The district court, contrary to Meyers' position and well-established rules of statutory construction, applied a strict, narrow and hyper-technical interpretation of the phrase "used exclusively by the owners" to conclude that Lake Panorama was not a privately-owned lake. Because the district court believed that Lake Panorama could be accessed via public waters, the Middle Racoon River, the court concluded that Lake Panorama could not be used exclusively by the owners and personal guests of the LPA and therefore did not meet the definition of a privately-owned lake. Ruling on Motion to Suppress Evidence; App. A032-A040.

While the district court's approach may at first blush be instinctively simplistic and therefore appealing, the legislature did not intend a strict and hyper-technical interpretation of the phrase "used exclusively by the owners" to eliminate otherwise qualifying bodies of water from the definition of privately owned lakes simply because of their connection to public waters. First, such an application would interpret privately owned lakes out of existence. Second, that application is contrary to the clear intent of the legislature as demonstrated by the legislature's

intentional choice to not condition the definition of privately-owned lake upon no connection to public waters as it did with farm ponds. Third, equating theoretical or occasional accessibility to “public use” is contrary to well-established rules of law discussing exclusivity of use in closely allied legal subjects. Finally, such an interpretation and application of that phrase creates unconstitutional ambiguity and uncertainty regarding a body of water’s status as a privately-owned lake thereby improperly encouraging arbitrary enforcement.

**A. The legislature intended general characteristics, ownership, common-sense determinations of accessibility and surrounding environment of a body of water to guide application of its definition of privately-owned lake, as opposed to theoretical or occasional accessibility via connected public waters.**

“In determining the meanings of statutes, “our primary goal is to give effect to the intent of the legislature.” *Hearn*, 797 N.W.2d at 583. “That intent is evidenced by the words used in the statute.” *Id.* In interpreting a statute and ascertaining legislative intent, all parts of an enactment should be considered together, and undue importance should not be given to any single or isolated portion. *Welp v. Iowa Dept. of Revenue*, 333 N.W.2d 481, 483 (Iowa 1983). “To ascertain the legislature’s intent, we will assess ‘the statute in its entirety, not just isolated words or phrases,’ and we will seek to interpret it so that no part of it is rendered redundant or irrelevant.” *State v. McCullah*, 787 N.W.2d 90, 94 (Iowa 2010); quoting *State v. Gonzalez*, 718 N.W.2d 304, 308 (Iowa 2006). Criminal

statutes are strictly construed, and the court strives for a reasonable interpretation that best achieves the statute's purpose and avoids absurd results. *Id.*

As a starting point, interpreting the definition of a privately-owned lake to exclude bodies of water that are connected to, and thereby theoretically accessible from public waters, would render section 462A.2(31) superfluous and irrelevant. There would no longer be such thing as a "privately owned lake." Almost every lake in the state of Iowa has an ingress and egress of flowing water in the form of either a river, stream or creek, i.e. public waters. See Iowa Code § 462A.3A. To conclude that an otherwise privately-owned lake loses its status because it is connected to a public water would be to interpret privately owned lakes out of existence.

Instead of interpreting privately owned lakes out of existence, the application of the definition set forth in section 462A.2(31) must focus on the general characteristics of the body of water, common-sense assessment of public accessibility, and importantly, ownership of the land surrounding and underneath the body of water. This creates an objective standard that is readily discernable by the public, owners, and the courts. If the land is privately owned and the general nature of the body of water and its surrounding environment provide fair notice to an individual of ordinary intelligence that the body of water is not open to the use of the general public, that waterway qualifies as a privately-owned lake. Such a

standard complies with other well-established rules of statutory construction as well as constitutional requirements.

**1. The Legislature Intentionally Declined to Condition the Definition of “Privately Owned Lake” Upon a Body of Water Having No Connection to Public Waters.**

The Iowa legislature, in creating the definition of privately-owned lake, intentionally declined to condition the definition upon the lake having no connection to public waters. Had the legislature intended to limit privately owned lakes to only land-locked bodies of water with no connection to public waters, they would have said so. When the legislature takes the time to define and restrict a definition, their intentions regarding that definition control its application. The legislature may act as its own lexicographer and when it does the courts are bound by the legislature’s own definitions. *State v. Fischer*, 785 N.W.2d 697, 702 (Iowa 2010). “Legislative intent is expressed by omission as well as by inclusion, and the express mention of one thing implies the exclusion of others not so mentioned.” *Marcus v. Young*, 538 N.W.2d 285, 289 (Iowa 1995). The rule that inclusion implies exclusion is “a product of logic and commons sense” embracing the teaching of common experience that “when people say one thing, they do not mean something else.” *State v. Carpenter*, 616 N.W.2d 540, 543 (Iowa 2000) citing 2A Norman J. Singer, *Sutherland Statutory Construction*, § 47.23 & 47.25, at 315 & 327 (6<sup>th</sup> ed. 2000).

Iowa Code section 462A.2(45) exempts not only privately-owned lakes from the jurisdiction of the commission, but farm ponds as well. The legislature provided the courts with a very specific and detailed definition of “farm ponds” from which the commission’s jurisdiction is also exempted. “Farm pond” is defined as “a body of water wholly on the lands of a single owner, or a group of joint owners, which *does not have any connection with any public waters* and which is less than ten surface acres.” (emphasis added) Iowa Code § 462A.2(15).

Clearly, the legislature understood that in certain circumstances, connections to public waters could be a factor in determining whether certain waters of this state were within the jurisdiction of the commission. They knew how to articulate when and under what circumstances connections to public waters impacted the commission’s jurisdiction over various waters. Had the legislature intended to make the definition of privately owned lakes depend upon connection to public waters, they knew how to articulate such a requirement. They chose not to and consequently, the theoretical, unproven connection of Lake Panorama to the Middle Racoon River does not and cannot transform it from a privately-owned lake to public waters.

**2. Exclusivity of Use Has a Specialized Meaning in Property Law Which is Not Defeated by Occasional or Theoretical Access by Others.**

Meyers' contention that the legislature did not intend to condition a body of water's status as a privately-owned lake upon theoretical or occasional access by non-owners or their guests also finds support within the closely related subject matter of property rights. Disputes surrounding the exclusivity of use of property is not a foreign one in law. Iowa courts have repeatedly and consistently explained that exclusivity of use has a specialized meaning in property law which is not defeated by occasional access by non-owners. When a phrase has a specialized meaning in the context of the statute in which it is used, that meaning controls. *Myria Holdings Inc., v. Iowa Department of Revenue*, 892 N.W.2d 343, 348 (Iowa 2017). Statutes are to be construed harmoniously with other statutes related to similar subject matter or to closely allied subjects. *Id.* at 349.

The concept of "exclusive use" in property disputes most commonly arises in claims related to adverse possession. Adverse possession requires, among other things, open and exclusive use of property before the essential elements can be met. *Carpenter v. Ruperto*, 315 N.W.2d 782, 784 (Iowa 1982). Importantly, the law in this area is strictly construed against a finding of adverse possession. *Id.* Despite a strict construction against a finding of adverse possession, the Iowa Supreme Court has explained that exclusivity of use is not defeated by theoretical or even occasional access by others.

In *Huebner v. Kuberski*, the Iowa Supreme Court upheld a finding of adverse possession even though children of the family challenging its application, would climb over the fence and take berries from the disputed property. The court explained, ““a claimant’s possession need not be absolutely exclusive; it need only be of a type of possession which would characterize an owner’s use.”” *Huebner v. Kuberski*, 387 N.W.2d 144, 146 (Iowa 1986); quoting 2 C.J.S. *Adverse Possession* § 54 (1972). “Further, a ‘mere casual intrusion by others on property ... does not deprive his possession of its exclusive character.’” *Id.* quoting *Adverse Possession* § 56.

If occasional access does not defeat the exclusive use requirement in adverse possession proceedings which are strictly construed, it must also follow that an occasional or theoretical access of a body of water by a member of the public cannot defeat the exclusivity of use by the owners of an otherwise privately owned lake. In this case, the State failed to prove the accessibility of Lake Panorama from any connected public water. The fact that a conservation officer engaged in a covert mission to sneak onto the waters of Lake Panorama to surprise boaters and issue citations eleven years prior to the date Meyers was stopped, or even a theoretical, but unproven ability of a member of the general public to occasionally access the lake, does not defeat the owner’s right to exclusive use of Lake Panorama. Equating theoretical or occasional accessibility to “public use” is

contrary to well-established rules of law discussing applying exclusivity of use in closely allied legal subjects.

**3. The definition of “privately owned lake” set out in Iowa Code section 462A.2(31) must turn on the ownership of the land and objective nature of the body of water to ensure a clear, consistent application, and avoid unconstitutional vagueness and arbitrary enforcement.**

Constitutional principles require that a statute be interpreted in a manner which avoids vagueness. As previously explained, Iowa Code section 462A.12(4) creates a public offense. See Iowa Code § 701.2. A statute defining a public offense must define such offense “with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” *State v. Robinson*, 618 N.W.2d 306, 314 (Iowa 2000). Due process requires legislation imposing a sanction to give a person of ordinary intelligence fair notice of what conduct is prohibited so he or she may act accordingly. *Am. Dog Owners Ass’n, Inc., v. City of Des Moines*, 469 N.W.2d 416, 417-18 (Iowa 1991). “If vagueness can be avoided by a reasonable construction, consistent with the statute’s purpose and traditional restraints on judicial legislation, the statute must be interpreted in that way.” *Knepper v. Monticello State Bank*, 450 N.W.2d 833, 838 (Iowa 1990).

The ownership of the surrounding and underlying land, coupled with the general nature and use of a body of water as demonstrated by the objective

surrounding environment, must be the controlling determination in ascertaining whether a body of water is a privately-owned lake. This creates a standard that is readily discernable to the public, owners and/or guests, and the courts. It imposes an objective standard that can be readily identified from one's surrounding environment, providing fair notice of what is prohibited thereby preventing arbitrary enforcement. Private ownership of the land, signage, restrictions to direct access of the water from the surrounding land, and enforcement of private regulations related to the water all put those impacted on the required notices as to the private nature of the body of water.

Conversely, interpreting section 462A.2(31) to exclude bodies of water that otherwise meet the definition of a privately-owned lake, simply because of a theoretical connection to public waters, produces vagueness and invites arbitrary enforcement. Such an interpretation would make it impossible for persons of ordinarily intelligence to be on fair notice of what is and is not prohibited.

The blue light prohibition of section 462A.12(4) only applies upon "waters of this state under the jurisdiction of the commission." However, if the jurisdiction of the commission over an otherwise privately-owned lake is dependent upon the accessibility of that body of water from a connected public waterway, the commission's jurisdiction could come and go with the tides, seasons, and everchanging whims of Mother Nature. Water flow and water levels vary as much

in the State of Iowa as the wants and desires of a two-year old child. Interpreting the definition of privately-owned lakes to turn on accessibility from public waters, would mean that water levels, rock placements, landslides, flood deposits, debris, silt, and other constantly changing environmental factors occurring on waterways would place the commission's jurisdiction in a constant state of flux. The commissions jurisdiction could literally change by the year, month, week, day, hour, or even minute.

If water levels are low thereby prohibiting a person from floating from one body of water to the other, jurisdiction would cease to exist; blue lights would be permitted. If debris were such that a floating passage from one waterway to the other could not be accomplished, jurisdiction would cease to exist; blue lights would be permitted. During flood stages though, all otherwise separate waterways then connected would suddenly fall within the jurisdiction of the commission; blue lights would be prohibited. Such an interpretation would be an unworkable breeding ground of uncertainty and arbitrary application and enforcement.

In order to avoid uncertainty, ambiguity and arbitrary enforcement, an objective standard focusing on the ownership of the land and surrounding environment of the body of water must be the controlling determination. This creates a standard that is readily discernable to all those affected and avoids

vagueness by way of a reasonable construction which is consistent with the statute's purpose. See *Knepper*, 450 N.W.2d at 838.

**4. Applying the Legislatively Intended Objective Standard Leaves No Doubt that Lake Panorama is a Privately-Owned Lake.**

The record is abundantly clear that Lake Panorama qualifies as a privately-owned lake as defined in Iowa Code section 462A.2(31). The objective evidence relating to the body of water and its surrounding environment make this fact clear. Signs are erected at the marina, boat ramp and other areas around the lake, notifying the public that the lake is private. Tr. 19; Exhibit F; App. A030. All of the land around and under Lake Panorama is privately owned either by members or the LPA itself. Tr. 20-21, 35, 44-45. There is only one boat ramp which is owned and controlled by the LPA that the public is not free to use. Tr. 20-21, 35, 44-55. Access to the common areas and the lake are restricted by the LPA. Tr. 20-21, 35, 44-45.

The general public is not permitted to use the lake and all vessels operating on the lake must be registered with the LPA and display a current LPA registration sticker. Tr. 46, 48; Exhibit B, p. 3; App. A081-A026. The LPA also regulates the physical size, motor, and horsepower of any vessel operated on the waters of Lake Panorama and imposes stricter restrictions than regulations applicable on public waters. Tr. 47; Exhibit B, pp. 3-4. The rules and regulations and restriction on

access are enforced by a private safety patrol under the authority of the LPA. Tr. 20; Exhibit B, p. 2; App. A018-A026.

The above facts being proven, Lake Panorama is a privately-owned lake as defined in Iowa Code section 462A.2(31). It is not open to use by the general public and is intended to be used exclusively by its owners and their personal guests. As such, the blue light prohibition set out in Iowa Code section 462A.12(4) was not applicable to Meyers' vessel as it was operated on Lake Panorama on July 7, 2018. Because the blue light prohibition of Iowa Code section 462A.12(4) did not apply to Meyers' vessel, the conservation officers did not have the probable cause required to justify the seizure of Meyers. The seizure of Meyers' person therefore violated the Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution.

**B. The State Failed to Prove Lake Panorama was Accessible from the Middle Racoon River on the Night Meyers was Stopped.**

Even if the court wishes to ignore the objective nature of Lake Panorama and its surrounding environment and instead focus on the theoretical accessibility of the lake from public waters, the State failed to prove that Lake Panorama was accessible from the Middle Racoon River on the night Meyers was stopped. The burden of proving facts justifying the warrantless stop of a vessel lies completely upon the shoulders of the State. *Pettijohn*, 899 N.W.2d 14. The court is not free to

substitute its own factual findings if they are not supported by the evidentiary record. Here, the State failed to prove that Lake Panorama was accessible from the Middle Racoon River on the night that Meyers was stopped by the conservation officers.

The only evidence of the accessibility of Lake Panorama from the Middle Racoon River came by way of the testimony of Department of Natural Resource Officer Smith. Smith testified that he had previously covertly accessed Lake Panorama from the Middle Racoon River to write tickets to unsuspecting boaters, during the time he was a conservation officer in that area back in 2005-2006. Tr. 29, 34-35. That was eleven years prior to the stop of Meyers' vessel. Smith provided no testimony as to his factual knowledge, if any, regarding Lake Panorama or its connection with the Middle Racoon River on the night Meyers was stopped.

Officer Arnold, who stopped Meyers, conceded that he himself did not travel to the northernmost boundary of Lake Panorama that night nor was he aware of whether any of the other officers on the "saturation patrol" ventured up to the northern boundary. Tr. 21. Absent a factual basis establishing that Lake Panorama was indeed accessible by way of the Middle Racoon River on the night Meyers was stopped, the State failed to meet its burden, even under the district court's strained application of section 462A.2(31).

## **II. REASONABLE SUSPICION CANNOT JUSTIFY THE STOP OF MEYERS' VESSEL.**

To the extent that the district court's ruling references reasonable suspicion, the instant case involves a violation of boating regulations which are akin to traffic infractions. See *Pettijohn*, 899 N.W.2d at 14. The standard applicable in this analysis is one of probable cause, not reasonable suspicion. See *Tague*, 676 N.W.2d at 201 (Iowa 2004). The officer testified that he stopped Meyers' vessel for a violation of a specified statutory provision. Tr. 11. There was no indication that his purpose behind the stop was to "investigate" the commission of an actual crime.

Additionally, no investigative purpose could have been furthered by the officers' stop of Meyers' vessel. The purpose of a "reasonable suspicion" based investigatory stop "is to allow a police officer to confirm or dispel suspicions of criminal activity through reasonable questioning." *State v. Kreps*, 650 N.W.2d 636, 641 (Iowa 2002). There was simply no suspicion of criminal activity that the officers needed to "confirm or dispel" through reasonable questioning in the instant fact pattern. The fact that Meyers was stopped for an alleged violation of a statute that was not applicable to the given situation makes even a reasonable suspicion standard impossible to meet because an "investigation" could not either confirm,

nor dispel, any suspicion alleged to have exist. As such, the reasonable suspicion standard simply does not apply.

**Conclusion**

For the reasons set forth above, Appellant respectfully requests that this court reverse the District Court’s decision denying his motion to suppress evidence and remand the case for a new trial without the improperly obtained evidence.

**Request for Oral Argument**

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

Respectfully Submitted,

GOURLEY, REHKEMPER &  
LINDHOLM, P.L.C.



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Robert G. Rehkemper

June 21, 2019

Date

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