IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 18-2222

STATE OF IOWA,
Plaintiff- Appellee
vs.

JEFFREY ALAN MEYERS
Defendant- Appellant

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

APPELLANT'S FINAL REPLY BRIEF

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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.

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CERTIFICATE OF SERVICE UPON THE DEFENDANT

I, Robert G. Rehkemper, hereby certify that on June 21, 2019, I served a copy of Defendant's Reply 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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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.

It bears repeating that the instant appeal requires the court to interpret a statute creating a public offense. As such, the statute is strictly construed, and any doubt of its applicability must benefit the accused. *State v. Hearn*, 797 N.W.2d 577, 583 (Iowa 2011). The ambiguity in the statute, whether a result of legislative "oversights" or otherwise, coupled with the State's failure to prove that the defendant's conduct fell within the prohibition of the statute, are fatal to the State's advanced justification for the seizure of Meyers' person.

The State failed to prove that the blue-light prohibition in section 462A.12(4) applied to Meyers at the time his vessel was stopped. It is notable that the State cites no caselaw, rules of statutory construction, nor any other legal authority in support of any of its arguments that Lake Panorama does not fall within the definition of a privately owned lake. This is because, as explained in Appellant's initial brief, the available authority is firmly on Meyers' side.

The State, in attempting to argue that Lake Panorama is not a privately owned lake, seeks to focus on a singular portion of the definition set out in Iowa

Code section 462A.2(31); "not open to the use of the general public." However, if the court simply focuses on that isolated phrase, the Iowa Legislature has already excluded lakes from the declaration of waters that are "open to the use of the general public." Lakes are excluded from the list of waterways that are declared to be available for the public's use for navigation purposes. Iowa Code section 462A.3A, declares: "Water occurring in any *river, stream, or creek* having definite banks and bed with visible evidence of the flow of water is flowing surface water and is declared to be public waters of the state of Iowa and subject to use by the public for navigation purposes in accordance with the law." (emphasis added) *Id.* "Lakes" are noticeably absent from this declaration. Thus, the State's attempted focus on an isolated portion of the statute is unpersuasive.

More importantly, a statute must be read in its entirety. See *Welp v. Iowa Dept. of Revenue*, 333 N.W.2d 481, 483 (Iowa 1983) (all parts of an enactment should be considered together, and undue importance should not be given to any single or isolated portion). When the entirety of the definition of privately owned lake is considered, it is clear that the statutory focus is on the objective nature of the intended use of the lake, not theoretical accessibility by the public. Again, a statute must be interpreted in a manner that allows it to be applied and enforced in a systematic, non-arbitrary manner. Interpreting the definition of privately owned

lake to turn on theoretical access by the public via unproven, theoretically connected waterways, as advanced by the State, breeds ambiguity.

The State contends that vagueness in their proposed interpretation and application of the definition of privately owned lake is avoided by an unarticulated requirement that the public waters must be connected by "navigable waters." Appellee's Brief, pp. 14-15. Such a strained application reads into the definition of "privately owned lake" a requirement that is not present in the definition; exclusion of a connection to public waters by way of "navigable waters." This circles us back around to the fact highlighted in Meyers' initial brief which is, had the Legislature intended to condition a lake's status as a privately owned lake upon it having no connection to public waters, whether via "navigable waters" or not, they knew how to say it as they did in the definition of "farm ponds" in Iowa Code section 462A.2(15). The elected not to, thereby defeating the State's argument.

Additionally, the Attorney General opinions cited by the State do not assist this court's interpretation and application of the legislative definition of privately owned lake. The opinion of Joseph Kremer, pertaining to the scope of the public's right to navigate non-meandered streams, is inapplicable to this court's interpretation of "privately owned lake." See 1996 WL 169627 (Iowa A.G.). Rivers and streams are treated differently than lakes even on a statutory basis as explained previously. See Iowa Code § 462A.3A. Similarly, Jack Bedell's

opinion relating to the conservation commissions jurisdiction over lagoons that are still a part of a public lake, is equally inapplicable to the instant dispute. See 1962 WL 122803 (A.G.). It is common sense that one cannot divest the Conservation Commission of jurisdiction over waters that are still an uninterrupted part of a public lake. *Id.* Notably, Mr. Bedell's opinion was that the lagoons described in the letter were still a portion of Lake Okoboji, an undisputable public lake owned by the state of Iowa. *Id.* at 2.

Finally, even assuming the State's strained and vagueness-inducing interpretation of privately owned lake is correct, the State did not prove that Lake Panorama was accessible via navigable water from a connected public water at the time Meyers was seized. While the State made the argument that Lake Panorama was and is connected to the Middle Racoon River, it failed to prove on this record, that Lake Panorama was accessible via the Middle Racoon River, the week, month, year, or 10 years prior to Meyers' vessel being stopped. The State simply failed to prove that Lake Panorama was accessible via "navigable waters", (i.e. a waterway which could support a vessel capable of carrying one or more persons during a total of six months in one out of every ten years), see Iowa Code § 462A.2(22).

As it related to the accessibility of Lake Panorama via the Middle Racoon River, the only record made in this case was that a conservation officer succeeded in sneaking onto Lake Panorama via the Middle Racoon River, ELEVEN years

prior to the date Meyers' vessel was seized. Tr. 29, 37. Thus, even under the State's strained definition that would allow a privately owned lake to clandestinely transform from private to waters within the jurisdiction of the commission, the State still failed to meet its burden of proving that Lake Panorama was not a privately owned lake at the time Meyers' vessel was stopped.

In conclusion, it is important to focus on what this case is about and what it is not about. This case is simply about whether the blue light prohibition set forth in Iowa Code section 462A.12(4) was proven to be applicable to Meyers' vessel on the evening it was stopped by law enforcement. It is not about whether members of the public who may at some point in the future, float down from Springbrook State Park and find themselves on the water of Lake Panorama are trespassing or have the right to access the water of Lake Panorama under those circumstances. That is an issue for another day. This case is limited to whether the State met its burden of proving that the conservation officers were justified in seizing Meyers' person simply because his vessel displayed a blue accent light. The State failed to meet its burden and consequently, the seizure of Meyers' person violated Article I, section 8 of the Iowa Constitution.

II. THE STATE'S MISTAKE-OF-LAW ARGUMENT IS NOT PRESERVED FOR REVIEW AND THIS COURT SHOULD NOT STRAY FROM ITS PRIOR DECISIONS UNDER ARTICLE I, SECTION 8 OF THE IOWA CONSTITUTION.

"It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal." *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). "It is not a sensible exercise of appellate review to analyze facts of an issue without the benefit of a full record or lower court determination." *Id.*

Here, the State argued at the district court level: "If the Court finds that the stop of the pontoon boat was mistaken, the State urges the Court to adopt the objectively reasonable test as set out in Hein, for both the United States Constitution and Iowa Constitutional provisions, and find that the officers' mistake was objectively reasonable and therefore the stop should be upheld." Brief in Resistance to Defendant's Motion to Suppress, p. 5. While the State made the argument, the district court did not rule on this issue nor did it even attempt to address it in its ruling. "When a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal. *Meier*, 641 N.W.2d at 537.

The State failed to request a ruling on the issue and consequently has failed to preserve this issue for appellate review. *State v. Krogmann*, 804 N.W.2d 518,

524 (Iowa 2011). The court "would violate our function as a court of review if we were to pass upon the merits of a motion without at least a showing in the record that a trial court ruling was specifically requested, after which it failed or refused to rule." *State v. Schiernbeck*, 203 N.W.2d 546, 548 (Iowa 1973) (Defendant's failure to request ruling on filed motion to dismiss precluded appellate court's review of the issues raised in the motion to dismiss).

In the event that the court elects to ignore fundamental rules of error preservation and considers this issue, the Iowa Supreme Court has consistently and unanimously rejected the mistake-of-law exception to illegal seizures of its citizens. In 2000, a unanimous Iowa Supreme Court rejected the federal "good faith exception" to the exclusionary rule of the Fourth Amendment set out by the United States Supreme Court in *United States v. Leon*, 468 U.S. 897 (1984). *State v. Cline*, 6517 N.W.2d 277 (Iowa 2000). In doing so, the unanimous court went into detail as to why a "good faith" exception for otherwise unlawful violations of citizen's constitutional rights by law enforcement, is contrary to the purpose and long-standing history of Iowa's exclusionary rule under Article I, section 8 of the Iowa Constitution. The court explained: "to adopt a good faith exception would only encourage lax practices by government officials in all three branches of government." *Id.* at 290. This ruling is important because the mistake-of-law exception sought by the State, builds upon the federal "good faith" exception.

In 2010, the Iowa Supreme Court clearly, specifically and unanimously rejected the mistake-of-law exception to the exclusionary rule under Article I, section 8 of the Iowa Constitution in *State v. Louwrens*, 792 N.W.2d 649 (Iowa 2010). In 2013, the Iowa Supreme Court unanimously confirmed its prior holding that a mistake-of-law may not be relied upon to justify an otherwise unconstitutional seizure. *State v. Tyler*, 830 N.W.2d 288, 294 (Iowa 2013).

The United States Supreme Court decided *Heien v. North Carolina*, 574 U.S. 54 (2014), holding that under the Fourth Amendment an officer's reasonable mistake-of-law may nonetheless give rise to a reasonable suspicion stop. Justice Sotomayor dissented concluding: "To my mind, the more administrable approach – and the one more consistent with our precedents and principles – would be to hold that an officer's mistake of law, no matter how reasonable, cannot support the individualized suspicion necessary to justify a seizure under the Fourth Amendment." *Id*. at 547 (J. Sotomayor, dissenting).

Since *Heien*, the Iowa Supreme Court has repeatedly explained that the United States Supreme Court's ruling in *Heien* does not change it's ruling that a mistake-of-law may not justify a seizure under Article I, section 8 of the Iowa Constitution. In *State v. Coleman*, 890 N.W.2d 284 (Iowa 2017), the Iowa Supreme Court confirmed it's holding in *Tyler* that a mistake-of-law may not justify a seizure under article I, section 8 of the Iowa Constitution. The court

explained: "Of course, the ruling in *Tyler* under the Iowa Constitution is unaffected by *Heien*. Further, the approach in *Heien* would be very difficult to square with our rejection of the good-faith exception to the exclusionary rule under article I, section 8 of the Iowa Constitution in *Cline*, 717 N.W.2d at 293." *Id.* at 298, n. 2.

Most recently, in *State v. Scheffert*, 910 N.W.2d 577, 584-85 n. 2 (Iowa 2018) another unanimous Iowa Supreme Court again confirmed that a mistake-of-law is not sufficient to meet the State's burden to justify a stop. In a footnote, the Court made clear: "the mistake of law doctrine is broader under the United States Constitution than it is under the Iowa Constitution." *Id.* at n.2.

The argument being made by the State in support of revisiting the mistake-of-law justification to an otherwise illegal seizure is a perceived difficulty that arises with courts attempting to distinguish and articulate differences between a reasonable mistake-of-law and reasonable mistake-of-fact. The problem with this argument, in addition to being contrary to decades of unanimous prior Iowa Supreme Court decisions, is the fact that the State has failed to raise the reasonable mistake-of-fact defense to the officer's action. For the Iowa Supreme Court to delve in, and appropriately weigh the arguments for and against an expansion of this doctrine, both issues should be properly before the court. They are not, and this court should leave this issue for another day.

Finally, the conservation officer's mistake-of-law at issue in this case is not and cannot be deemed objectively "reasonable." All of the objective facts lend to a conclusion that Lake Panorama is a privately owned lake. Lake Panorama is publicly held out and is clearly marked as a "private lake" with access to and from the lake being restricted by the LPA. Tr. 19-21, 44-45, 48. It has its own rules and enforcement patrol. Tr. 20. In fact, the Department of Natural Resources must rent a boat slip from the LPA to access the lake. Tr. 19. Every available objective fact screams out "private lake."

More importantly, the chief law enforcement officer of the State of Iowa published an opinion that Lake Panorama is indeed, a privately owned lake. Hon. George E. O'Malley, No. 70-3-27, 1970 WL 207619 (Iowa A.G.). That opinion was never retracted, and no contrary opinions have been issued by any other subsequent Iowa Attorney General, as to Lake Panorama. The fact that a few over-zealous conservations officers took issue with the opinion does not and cannot magically transform their mistake into a "reasonable" mistake-of-law.

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.

Respectfully Submitted,

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LINDHOLM, P.L.C.

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1. This brief complies with the type-volume limitations of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 2,453 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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Robert G. Rehkemper — June 21, 2019 Date

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I, Robert G. Rehkemper, attorney for the Appellant, hereby certifies that the actual cost of reproducing the necessary copies of this Brief was $0.00, and that amount has been paid in full by me.

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