

IN THE SUPREME COURT OF IOWA
Supreme Court No. 16-0267

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL SCHEFFERT,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
THE HONORABLE JOSEPH MOOTHART, JUDGE

PETITION FOR REHEARING TO SUPREME COURT
(Decision date: Nov. 17, 2017)

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

The Court Overlooked Section 350.10, Which Sets a Presumptive Closing Time for State and County Parks

Authorities

State v. Kinead, 570 N.W.2d 97 (Iowa 1997)

State v. Scheffert, No. 16-0267, 2017 WL 1735627 (Iowa Ct.
App. May 3, 2017)

Iowa Code § 350.10

Iowa Code § 455A.2,

Iowa Code § 455A.3

Iowa Code § 461A.1

Iowa Code § 461A.3

Iowa Code § 461A.46

RULES & REGULATIONS, BLACK HAWK COUNTY, IOWA

CONSERVATION BOARD, [HTTP://WWW.MYCOUNTPARKS.COM/
HANDLER.ASHX?ITEM_ID=7A548CAF-4788-49C8-8E9C-
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ARGUMENT

I. **The Court Overlooked Section 350.10, Which Sets a Presumptive Closing Time for State and County Parks.**

Preservation of Error

The defendant did not preserve the section-350.5 argument that serves as the basis for this Court's opinion, nor did he raise it in his brief. *See* supp. hrg. tr. p. 23, line 1 — p. 24, line 10; Defendant's Final Br. at 9–11.

The State agrees the mistake-of-law issue was not preserved. *Compare* slip op. at *11 (“Even if the State had raised mistake of law in the district court, thereby preserving error, this defense has no merits.”), *with* State's Application for Further Review, p. 26 (“[T]he mistake-of-law issue is not properly part of this appeal, as it was not litigated below and error was not preserved.”). Given the language of section 350.10, discussed below, this Court can affirm the defendant's conviction without considering the mistake-of-law arguments.

Standard of Review

Review is de novo. *State v. Kinkead*, 570 N.W.2d 97, 99 (Iowa 1997).

Merits

The Court “disagree[d]” with the Court of Appeals’ analysis in this case, but reversed on other grounds by relying on a provision of section 350.5 (regulating the adoption of county conservation ordinances) to conclude the police made an unreasonable mistake of law. *See generally* slip op. The Court’s analysis drifted from the issue presented and appears to have overlooked a dispositive statute. As explained below, section 350.10—a statute that renders the state-park closing-time statute applicable to county parks—resolves the section-350.5 issue raised by the Court.

In its opinion, the Court characterized the defense argument as follows:

At trial and on appeal, Scheffert argues there can be no violation unless the county conservation board posted the closing time. Without such a posting, Scheffert contends, the officer did not have probable cause or reasonable suspicion to stop him.

Slip op. at *10. The Court then relied on the third sentence of section 350.5 to conclude that any county conservation rules regarding closing time were not legally effective because the regulations were not published and posted. *See* slip op. at 10–11. But this argument was not advanced by the defendant in the district court or on appeal.

Below, the defendant argued that the crime codified in section 461A.46 should require some kind of intent or knowledge because “it just seems strange that a person could be charged with this ticket for violating this curfew” without knowing they were in a park area after hours. Supp. hrg. tr. p. 23, line 1 — p. 24, line 10. On appeal, the defendant levied two complaints: first, that “[n]o evidence was presented on this [closing-time] issue other than the Deputy’s testimony that the park closes at 10:30 p.m.”;¹ and second, that it was “unreasonable” to not require signage, analogizing to section 461A.36 (which requires signage for speeding violations but says nothing about park-closure times).² Defendant’s Final Br. at 9–11. The defendant has never argued, as this Court concluded, that adoption of a county conservation ordinance is ineffective under the third sentence of section 350.5 unless the conservation board adequately published and posted its rules near the park gate.

¹ This seems to be what led the Court of Appeals to analyze whether an ordinance must be offered into evidence. *See State v. Scheffert*, No. 16-0267, 2017 WL 1735627, at *2–3 (Iowa Ct. App. May 3, 2017).

² Neither this Court nor the Court of Appeals overtly addressed this speeding-statute argument, but both courts seem to have implicitly rejected it.

If the defendant had raised this claim, the State would have had a response: if the county conservation board did not effectively promulgate rules to supersede or modify the rules of state parks (as this Court concluded in its opinion), the Code presumptively imposes the state-park rules, including the 10:30 p.m. closing time, on county parks. Specifically, Iowa Code section 461A.46 provides that, absent a granted exception, “all persons shall vacate state parks and preserves before 10:30 p.m.” Iowa Code § 461A.46 (2015). Section 350.10 provides that this statute “appl[ies] to all lands and waters under the control of a county conservation board, in the same manner as if the lands and waters were state parks, lands, or waters.” Iowa Code § 350.10 (2015).

Admittedly, section 350.10 does provide that these state rules “may be modified or superseded by rules adopted as provided in section 350.5.” Iowa Code § 350.10 (2015). However, the conservation board never modified or superseded the state rule: the officer’s testimony confirmed the closing time was 10:30 p.m. *See* supp. hrg. tr. p. 14, lines 16–20. And if the Court were inclined to look outside the record or take judicial notice, the rules published by the Board online indicate that it expressly adopted, rather than

modified or superseded, the closing time provided by section 461A.46. *See* RULES & REGULATIONS, BLACK HAWK COUNTY, IOWA CONSERVATION BOARD, [HTTP://WWW.MYCOUNTPARKS.COM/HANDLER.ASHX?ITEM_ID=7A548CAF-4788-49C8-8E9C-BB51808EE17E](http://www.mycountyparks.com/HANDLER.ASHX?ITEM_ID=7A548CAF-4788-49C8-8E9C-BB51808EE17E) (page 2 of the .PDF file).

In short, sections 461A.46 and 350.10 establish that, absent rules that supersede or modify the state-park closing time of 10:30 p.m., the closing time for all county parks is 10:30 p.m. *See* Iowa Code §§ 350.10, 461A.46 (2015). This is consistent with the district court's conclusion:

The court concludes that the stop of the defendant's vehicle was based on specific and articulable cause to reasonably believe that the defendant was operating his vehicle in a county access area after hours. The defendant may not have been aware that the access area closed at 10:30 p.m. However, the defendant's vehicle could legally be stopped as it was entering or approaching the county access area at [1]2:37 a.m. on the only road into the area.

Ruling on Motion to Suppress, pp. 2–3; App. 8–9. The district court should have been affirmed.

In its opinion, the Court devoted a paragraph to authorities the parties did not cite, including the definitional and prefatory statutes

concerning “the natural resource commission, department of natural resources, and director of the department of natural resources.” Slip op. at *6; slip op. at *6–7 (citing Iowa Code §§ 461A.1, 461A.3, 455A.2, 455A.3). The Court’s reasoning seems to be that section 461A.46 is inapplicable to a county park because the section is mostly about state parks. Slip op. at *7. This observation would only be true if the Court overlooked section 350.10. That section expressly makes state park rules (including section 461A.46) applicable to county parks: “Sections 461A.35 through 461A.57 apply to all lands and waters under the control of a county conservation board, in the same manner as if the lands and waters were state parks, lands, or waters.” Iowa Code § 350.10 (2015).

The Court’s analogies do not hold up in light of section 350.10. For example, the Court contends that section 461A.46 only applies to state parks because it refers to “the natural resources commission,” which has the duty “to maintain and improve state parks.” Slip op. at *6. But actually, section 350.10 expressly provides that a reference to “‘natural resource commission’ includes a county conservation board ... with respect to lands or waters under the control of a county

conservation board.” Iowa Code § 350.10 (2015). Similarly, the Court observed:

Moreover, section 461A.46 references “the director.” *Id.* § 461A.46. The director referred to in the statute is the director of the department of natural resources. *Id.* § 461A.1.

Slip op. at *7. Section 350.10 specifies that a reference to “‘director’ includes a county conservation board or its director, with respect to lands or waters under the control of a county conservation board.”

Iowa Code § 350.10 (2015).

In raising the section-350.5-signage issue and deciding it adversely to the State, the Court overlooked section 350.10, which is dispositive on the reasonable-suspicion issue. Sections 461A.46 and 350.10 impose the state-park closing time for county parks unless the county has superseded or modified the rules. Because the county did not supersede or modify the state-park closing time, the section-350.5 argument is not applicable, and this Court should grant the petition for rehearing and affirm the defendant’s conviction.

CONCLUSION

This Court should grant rehearing and affirm the defendant’s conviction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:
 - This brief contains **1,349** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
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