

**IN THE COURT OF APPEALS OF IOWA**

No. 0-620 / 09-1529  
Filed September 22, 2010

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**TARA MARIE GARRISON,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis,  
District Associate Judge.

A defendant challenges the district court's denial of her motion to  
suppress evidence found during a warrantless search of her automobile.

**REVERSED AND REMANDED.**

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson,  
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney  
General, Janet M. Lyness, County Attorney, and Deborah Farmer Minot and  
David V. Tiffany, Assistant County Attorneys, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.  
Tabor, J., takes no part.

**VAITHESWARAN, P.J.**

Tara Garrison appeals her judgment and sentence for possession of a controlled substance, second offense. She challenges the district court's denial of her motion to suppress evidence found during a warrantless search of her automobile.

***I. Background Facts and Proceedings***

Coralville police officer Chad Bender was dispatched to the scene of a three-car accident. Tara Garrison was the driver of one of the vehicles involved in the accident. When she complained of pain, Bender directed her to a nearby ambulance.

Officer Darren Jensen arrived shortly thereafter. Bender asked Jensen to gather insurance and registration information from Garrison's vehicle, as she was in the ambulance. Jensen entered Garrison's vehicle and searched the glove compartment and the center console. He found Garrison's registration in the console. Also in the console was a pill bottle containing a plastic bag with what proved to be marijuana, together with a glass pipe. When confronted with these items, Garrison said she consumed marijuana the day before and forgot the contraband was in her car. Officer Bender arranged to have Garrison turn herself in at a later date, which she did.

The State charged Garrison with possession of a controlled substance, second offense. Garrison moved to suppress the evidence, citing federal and state constitutional prohibitions against warrantless searches and seizures. Following a hearing, the district court denied the motion. The court reasoned that

the search was justified by the “community caretaking” exception to the warrant requirement. Garrison stipulated to a trial on the minutes of evidence, was found guilty as charged, and was sentenced.

On appeal, Garrison contends the district court should have granted her motion to suppress the evidence as the community caretaking exception to the warrant requirement did not apply. Because she raises a constitutional issue, our review is *de novo*. *State v. Crawford*, 659 N.W.2d 537, 541 (Iowa 2003).

## **II. Analysis**

As noted, Garrison asserts a violation of both her federal and state constitutional rights. See U.S. Const. amend. IV; Iowa Const. art. I, § 8. Because she does not argue our analysis should differ under each constitutional provision, our discussion of the merits “applies equally to [her] state and federal constitutional claims.” *State v. Hoskins*, 711 N.W.2d 720, 725 (Iowa 2006).

A warrantless search is *per se* unreasonable, subject to a few carefully drawn exceptions. *Crawford*, 659 N.W.2d at 541. One of the exceptions is for community caretaking functions. See *Cady v. Dombrowski*, 413 U.S. 433, 441, 93 S. Ct. 2523, 2528, 37 L. Ed. 2d 706, 714–15 (1973). As the name implies, this exception permits a warrantless search of an automobile for the protection of the public and is “totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.” *Id.* To determine whether this exception applies, we ask:

- (1) was there a seizure within the meaning of the Fourth Amendment?;
- (2) if so, was the police conduct *bona fide* community caretaker activity?;
- and (3) if so, did the public need and interest outweigh the intrusion upon the privacy of the citizen?

*Crawford*, 659 N.W.2d at 543.

There is no disagreement that a seizure took place. The key question is whether the police were engaged in a “bona fide community caretaker activity.” *Id.* We use a reasonable person standard to analyze this question. *Id.* The district court essentially answered yes to this question. On our de novo review, we disagree with the court’s analysis.

When Officer Bender arrived at the scene, the three cars involved in the accident had already been pulled over to the side of the highway. While he testified the traffic was “pretty heavy,” he also stated the fire department was “handling traffic control.” Bender characterized the accident as “one that happened all the time” on this particular highway.

On his arrival, Bender spoke to Garrison, who was coherent enough to tell him she was experiencing some pain and was mobile enough to walk to a nearby ambulance when directed to do so. Bender did not ask her for her license or registration information at that or any other time, nor did he obtain her consent to search the vehicle. Instead, he told Officer Jensen to gather the registration information, which he said he needed. Bender stated that his sole purpose for having Garrison’s vehicle searched was to obtain her license and registration information “for [his] report.” He said, “I was to the point in my investigation where I needed those items to finish my investigation.”

Jensen testified that his instructions from Bender were specific; Bender told him he “was with one of the patients in the ambulance and asked [him] to go in one of the vehicles and look for the registration and insurance for the vehicle.”

The vehicle he was to enter was Garrison's, as Bender had already obtained license, registration, and insurance information from the drivers of the other vehicles. Jensen proceeded to implement these instructions. He acknowledged he did not first ask Garrison for the license and registration information or obtain her consent to enter the vehicle.

Based on these facts, we are convinced the officers were not engaged in a "bona fide community caretaker activity" when they searched Garrison's vehicle.

The State, however, seizes on Bender's stated need to complete the investigation and, citing a federal district court opinion, argues that function also falls within the community caretaking exception. *See United States v. Scott*, 428 F. Supp. 2d 1126, 1134–35 (E.D. Cal. 2006). *Scott* is distinguishable. Although an officer retrieved registration information from a glove compartment following a car accident and stated this information was needed to make an accurate report, the factual similarities end there. As the court noted, the registration information was also needed so that a tow company could remove the defendant's vehicle from a road "to ensure the public safety while driving on the road." *Id.* at 1135. Additionally, the defendant "was no longer at the scene of the accident, having been lawfully arrested." *Id.*; *see also United States v. Johnson*, 410 F.3d 137, 144–45 (4th Cir. 2005) (concluding exception applied where officer arrived at scene of accident to find man sitting unresponsively in car which was blocking one of three lanes of traffic and where officer opened glove compartment in hopes of finding identifying information that he could use to communicate more

effectively with man); *Crawford*, 659 N.W.2d at 543 (concluding police were justified in stopping vehicle under community caretaking exception where police were advised that man who had taken some pills, was agitated and aggressive and did not know where he was, wanted the police to take him home, and abruptly left in his vehicle).

In this case, Garrison's vehicle was off the road and she was still at the scene when her vehicle was searched. Accordingly, officers did not need to engage in a warrantless search of her vehicle to obtain the information needed for completion of the investigation.

Having concluded that the search was not in furtherance of a "bona fide caretaker activity," we find it unnecessary to address the third prong of the *Crawford* analysis. See *Crawford*, 659 N.W.2d at 543. We conclude Officer Jensen's search of Garrison's vehicle violated the constitutional prohibitions against warrantless searches and seizures. We reverse the suppression ruling and remand for further proceedings.

**REVERSED AND REMANDED.**