

IN THE SUPREME COURT OF IOWA  
Supreme Court No. 23-0858  
Woodbury County No. FECR116369

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STATE OF IOWA,  
Plaintiff-Appellant,

vs.

FARON ALAN STARR,  
Defendant-Appellee.

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ON DISCRETIONARY REVIEW FROM THE  
IOWA DISTRICT COURT FOR WOODBURY COUNTY  
THE HONORABLE JEFFREY A. NEARY, JUDGE

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**APPELLANT'S BRIEF**

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FINAL

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**STATEMENT OF THE ISSUE PRESENTED FOR  
REVIEW**

**I. The Plain-Language of Iowa Code Section 804.20  
Permits a Necessary Delay When a Gun Possibly  
Hidden in a Residential Area Threatens Public Safety.**

Authorities

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*Valadez v. City of Des Moines*, 324 N.W.2d 475 (Iowa 1982)  
Iowa Code § 804.20

## **ROUTING STATEMENT**

The Court should retain this matter. It poses a substantial issue of first impression and broad public importance: Does questioning to resolve a threat to the public safety, specifically guns possibly abandoned in a residential neighborhood, constitute an unnecessary delay under Iowa Code section 804.20? Iowa Rs. App. P. 6.1101(2)(c)–(d).

## **STATEMENT OF THE CASE**

### **Nature of the Case**

The district court granted suppression of evidence finding a violation of Iowa Code section 804.20. *See* Ruling Granting Supp., Dkt. No. 47; App. 26–43. The State seeks reversal of that finding on discretionary review.

### **Course of Proceedings**

On November 16, 2022, the State charged Starr by trial information with the offenses of (1) willful injury as a habitual offender, (2) burglary in the second degree, (3) going armed with intent as a habitual offender, (4) domestic abuse assault third offense as a habitual offender, and (5) two counts of felon in possession of a firearm as a habitual offender. Trial Info., Dkt. No. 16; App. 4–6. Starr moved to suppress evidence asserting, in part, his section

804.20 rights were violated. Am. Mot. Supp., Dkt. No. 36; App. 18–21. The State resisted asserting, in part, the language of section 804.20 permits necessary delays, which would include a threat to the public safety. *See* Resistance to Am. Mot. Supp., Dkt. No. 38; Resistance to Def. Additional Auth., Dkt. No. 43; App. 22–23, 24–25.

Following a hearing, the district court granted Starr’s motion “on the basis of the violation of Starr’s rights pursuant to Iowa Code section 804.20,” and the court suppressed “all evidence including statements and evidence obtained as a result of this violation.” Ruling Granting Supp. at 17, Dkt. No. 47; App. 42. The State sought, and the Iowa Supreme Court granted, discretionary review.

### **Facts**

On November 7, 2022, Sioux City Police Department officers received a report that Starr had stabbed a woman. Ruling Granting Supp. at 3, Dkt. No. 47; App. 28. The officers searched the area in the direction where the victim reported Starr had fled. *Id.* While doing so, another woman approached the officers to report a burglary and the theft of an AR-15 rifle and a shotgun, along with ammunition. *Id.* The time, location, and suspect’s description led the officers to believe Starr committed the burglary. *Id.* A nearby hospital and the nearby

schools locked down while the officers attempted to locate Starr because they considered him to be armed and dangerous. *Id.*

The officers located Starr the next day and they interviewed him at the police department. *Id.* at 4; App. 29. The officers were still attempting to locate the shotgun and AR-15 rifle, and they were concerned the guns had been abandoned in the largely residential area—which included elementary schools and a park—near where the burglary had occurred. Supp. Tr. (4/17/2023) 6:4–21, 9:3–10:1.

During his interview Starr said, “then why don’t I just call my father and have him get a lawyer and we can sign this paper and we can talk?” Ruling Granting Supp. at 4, Dkt. No. 47; App. 29. At first the officer declined to permit him to call his father and continued to question Starr, with the officer’s top priority being locating and securing the firearms. *Id.* at 4–5, 8–9; App. 29–30, 33–34; Supp. Tr. (4/17/2023) 9:3–10:1. The officer later attempted to permit Starr to call his father, but Starr could not do so because he forgot the phone number. Supp. Tr. (4/17/2023) 17:4–17. Starr eventually told the officers where the guns were located, and he guided them to the house where he had left them. *Id.* at 10:2–11.

## ARGUMENT

### I. **The Plain-Language of Iowa Code Section 804.20 Permits a Necessary Delay When a Gun Possibly Hidden in a Residential Area Threatens Public Safety.**

#### **Preservation of Error**

Starr moved to suppress his interview claiming, in part, a violation of Iowa Code section 804.20. Am. Mot. Supp., Dkt. No. 36; App. 18–21. The State resisted arguing a threat to public safety constituted a necessary delay as authorized by the plain language of the statute. *See* Resistance to Am. Mot. Supp., Dkt. No. 38; Resistance to Def. Additional Auth., Dkt. No. 43; App. 22–23, 24–25. The court granted Starr’s motion finding an 804.20 violation occurred. Ruling Granting Supp. at 16–17, Dkt. No. 47; App. 41–42. Error is preserved.

#### **Standard of Review**

A ruling on a motion to suppress based on a court’s statutory interpretations is reviewed for correction of errors at law. *See State v. Fischer*, 785 N.W.2d 697, 699 (Iowa 2010) (citing *State v. Stratmeier*, 672 N.W.2d 817, 820 (Iowa 2003)).

#### **Merits**

The district court erred in finding a violation of Starr’s section 804.20 rights. Ruling Granting Supp. at 16–17, Dkt. No. 47; App. 41–42. This Court should reverse the order granting suppression.



Iowa Code section 804.20 provides, in part:

Any peace officer or other person having custody of any person arrested or restrained of the person's liberty for any reason whatever, shall permit that person, *without unnecessary delay* after arrival at the place of detention, to call, consult, and see a member of the person's family or an attorney of the person's choice, or both.

Iowa Code § 804.20 (emphasis added). At issue here is whether this language permits a necessary delay when there is a threat to public safety. *See* Resistance to Am. Mot. Supp., Dkt. No. 38; Resistance to Def. Additional Auth., Dkt. No. 43; App. 22–23, 24–25.

The language of the statute—without unnecessary delay—“by its very terms contemplates that ‘necessary’ delay is permissible.” *Contreras v. State*, 67 S.W3d 181, 185 (Tex. Crim. App. 2001) (considering statute requiring transport of juvenile “without unnecessary delay”). Our courts have already recognized some delays are permissible without violating section 804.20’s mandate. *See State v. Smith*, No. 16-0749, 2017 WL 510957, at \*2 (Iowa Ct. App. Feb. 8, 2017) (recognizing time for security measures and administrative tasks after arrest are not unnecessary delays); *cf. Valadez v. City of Des Moines*, 324 N.W.2d 475, 478–79 (Iowa 1982) (recognizing it is

not an “unnecessary delay” under Iowa Code section 804.22 to wait for a magistrate’s regular courtroom hours).

Such necessary delays would include situations where public safety is threatened. *See In re J.D.*, 68 S.W.3d 775, 782–83 (Tex. Ct. App. 2001) (finding a necessary delay in transportation of a juvenile where it was necessary to secure the scene and there was a threat of a school shooting). This would be consistent with the recognition of a public safety exception for delays in providing a *Miranda* warning. *See In re J.D.F.*, 553 N.W.2d 585, 588 (Iowa 1996).

The public safety was threatened here because there was a possibility of guns hidden in a residential area encompassing schools and a park, which posed a danger to the public safety. The officer who questioned Starr explained his concern and why these stolen weapons were a danger to the public:

**Q.** What was your concern about the guns? Why were you trying to speak with the defendant regarding that?

**A.** The guns were probably—definitely my top priority in this. They were unaccounted for. We didn’t know where they could have gone. We didn’t know if they were stashed somewhere. The—the theory that made the most sense to us was that the suspect in this went through an alley into the back of the residence that was burglarized and then potentially left and went

out an alley again. So we were searching garages and alleys, dumpsters, yards for these firearms. And like I mentioned, this is a—rather large residential area. . . . [I]t’s all houses with the schools and everything near it too. So my priority was to try to find where those guns were.

**Q.** What was your concern about them being in this residential area?

**A.** That anyone and everyone walking around could have—could have picked them up and found them. Kids walking back and forth from school could have found them. And they’re very, very dangerous weapons. So we didn’t want that to happen. We wanted to recover them as fast as possible.

Supp. Tr. (4/17/2023) 9:3–10:11. Consistent with these concerns, when the firearms were initially stolen, nearby schools and a hospital were placed in lock-down, and a “significant search” of the area was attempted. *Id.* at 7:13–20, 20:1–21.

Both the United States Supreme Court and the Iowa Supreme Court have recognized concealed guns in public settings pose genuine threats to the public safety. *Cf. New York v. Quarles*, 467 U.S. 649, 657 (1984) (“So long as the gun was concealed somewhere in the supermarket, with its actual whereabouts unknown, it obviously posed more than one danger to the public safety: an accomplice might make use of it, a customer or employee might later come upon it.”); *In*

*re J.D.F.*, 553 N.W.2d at 588 (“[A] loaded gun left in a residential area is a genuine threat to the public safety . . .”). Likewise, the shotgun and AR-15 rifle possibly hidden somewhere in a residential neighborhood was enough of a danger to the public that necessitated delay before permitting Starr to make a phone call under section 804.20. Still, during the interview the officer eventually satisfied Starr’s section 804.20 rights by offering him a phone and a phonebook to call his father, but Starr did not know his father’s phone number. Supp. Tr. (4/17/2023) 17:7–17.

The district court did not reject the State’s argument that the threat to public safety was a necessary delay permitted by the language of section 804.20. Instead, the court found no authority recognized such delays to be permissible and found it was the prerogative of the appellate courts to so recognize:

[T]he State suggests that there should be a public safety exception to the strict application of Iowa Code Section 804.20. As of this point, no such exception has been recognized. It is likely that the Iowa Supreme Court would look favorably on such a suggestion under the proper circumstances, but it is the prerogative of the Iowa Supreme Court to carve out

exceptions to statutes and constitutional provisions and not the District Court.

Ruling Granting Supp. at 15–16, Dkt. No. 47; App. 40–41. This Court should clarify that a threat to the public safety may constitute a necessary delay under Iowa Code section 804.20. The district court's order granting suppression should be reversed and this Court should remand for further proceedings.

### **CONCLUSION**

This Court should find there was no violation of Iowa Code section 804.20, reverse the district court's order granting suppression of evidence, and remand for further proceedings.

## REQUEST FOR NONORAL SUBMISSION

The question raised in this appeal is not sufficiently complex such that oral submission would be necessary. Accordingly, the State requests nonoral submission.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **1,816** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: October 30, 2023



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