IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 23-0858
Woodbury County No. FECR116369

STATE OF IOWA,
Plaintiff-Appellant,

v.

FARON ALAN STARR,
Defendant-Appellee.

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

APPELLEE'S FINAL BRIEF

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ROUTING STATEMENT

This case should not be retained by the Iowa Supreme Court because the issue has already been adjudicated. The District Court found that investigator's attempts to Mirandize Starr precluded the application of a threat to public safety exception to Iowa Code Section 804.20. The circumstances of this case are not appropriate to resolve the question of such an application under Iowa Rs. App. P. 61101(2)(c)(d).

STATEMENT OF THE CASE

Nature of the Case:

The district court granted Faron Starr's (Starr) motion to suppress evidence that was obtained following a violation of Starr's right to call, consult, or see his family or an attorney under Section 804.20. (Ruling on MTS; App. 26). The state now seeks reversal of that finding on discretionary review.

Course of Proceedings:

Mr. Starr is charged with Willful Injury - Causing Serious Injury, in violation of Iowa Code §708.4(1), a Class C Felony; Burglary Second Degree, in violation of Iowa Code §713.5, a Class C Felony; Domestic Abuse Assault, 3rd or Subseq. Offense, in violation of Iowa Code

§708.2A(4), a Class D Felony; Going Armed with Intent, in violation of Iowa Code §708.8, a Class D Felony; and two counts of Possession of a Firearm, Prohibited Person, in violation of Iowa Code §724.26(1), a Class D Felony.

Starr filed his motion to suppress evidence on February 17, 2023, raising claims of his rights under the U.S. Constitutional and the Iowa Constitution. Of these claims, one alleged that Starr was interrogated while in custody without having been properly advised of his *Miranda* rights under S*tate v. Ortiz*, 766 N.W.2d 244 (Iowa 2009) and *Miranda v. Arizona*, 384 U.S. 436, 86 (1966). (Motion to Suppress; App. 7). The state resisted arguing that Starr did not unequivocally and unambiguously invoke his right to remain silent. The state alternatively offered that there was a threat to public safety which would excuse any potential *Miranda* violation under the exceptions established in *United States v. Patane*, 542 U.S. 630, 124 and *State v. Smith*, 854 N.W.2d 73 (Table), 2014 WL 3511811 (Iowa Ct. App. 2014). (Resistance; App. 10).

On April 14, 2023, an amended motion to suppress was filed which added the allegation that Starr was denied his right to consult a family member and/or an attorney while he was in custody pursuant to Section

804.20. (Amended Motion to Suppress; App. 18). The state, in turn, filed a resistance to this amended motion and argued that the public safety exception would apply to the statutory provision of Section 804.20. (Resistance to Amended Motion; App. 22).

Ultimately on April 26, 2023, the district court sided with the state in part and found that Starr did not unequivocally and unambiguously assert his right to remain silent. The court found that Starr was properly read his *Miranda* warning and, therefore, the public safety exception did not apply. Finding no prior recognition that such an exception extended to an individual's Section 804.20 rights, the Court granted Starr's suppression on that ground alone. (Ruling on MTS; App. 26).

The state sought, and the Iowa Supreme Court granted, discretionary review.

STATEMENT OF THE FACTS

"On November 7, 2022, Sioux City Police officers (SCPD) were called to the Leeds Food and Fuel convenience store as a result of a reported stabbing of Michelle Nelson. Upon arrival, Ms. Nelson reported that Starr had stabbed her with a knife. Information was provided to the SCPD that indicated which direction Starr went when he left the Food and Fuel. A

search for Starr began in the area. Shortly after this search began, officers were approached by another female reporting a break-in and the theft of two long guns, an AR-15 and a shotgun with ammunition.

This female's description of the burglar, the location of the break-in, and the approximate time of the break-in and theft led the SCPD to believe that Starr was a suspect for this burglary and theft of weapons. The SCPD locked down the schools located in the Leeds area while the search for Starr was conducted. The stabbing victim was taken to UnityPoint Hospital in Sioux City, and it was locked down due to the fact that she was receiving treatment there. Starr was considered armed and dangerous with the knife, two guns, and ammunition. None of the firearms were discharged based upon the evidence at the hearing and Starr was not specifically seen and identified as possessing either of the two stolen firearms or for that matter any other weapon except for the knife related to the stabbing at or near the Food and Fuel in Leeds.

Starr was not located on November 7, 2022, but was located and taken into custody the next day on November 8, 2022, at or near UnityPoint. Starr also had a warrant out for his arrest for a parole violation at the time he was taken into custody on November 8th. Starr was not armed when he was

arrested. Starr was clearly in custody on the parole violation warrant and the domestic abuse when he was taken to the Sioux City Police Department where he was placed into an interrogation room. He was joined in that room by Detective Dillon Grimsley and Detective Grimsley began the process of an interview of Starr after a bit of small talk.

As part of the interview, Grimsley read Starr his Miranda rights and asked Starr if he was willing to speak with him about matters related to the investigation (the stabbing and the theft of the guns). Additionally, Grimsley requested Starr to sign a document which acknowledged the reading of the Miranda rights and consenting to being interviewed by Grimsley (written waiver of rights). Starr did not sign the document. At one point in the interrogation, 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?' This is the first reference in the evidence at the hearing where Starr asked to call someone." (Ruling on MTS; App. 26). This request to speak with his family and an attorney was denied outright. Starr would later reveal information of the gun's location which is, in large part, the basis for the state's arguments in this case at large.

Any additional relevant facts will be discussed below.

ARGUMENT

I. THE PUBLIC SAFETY EXCEPTION IS BOTH INAPPLICABLE TO SECTION 804.20 AND UNNECESSARY IN THIS CIRUMSTANCE

Preservation of Error:

The state's application for discretionary review preserved the error in their resistance to amended motion to suppress and during the hearing on the matter. In the district court, Starr challenged the admissibility of his statements made after he was denied the opportunity to consult with his family and an attorney. (Amended Motion to Suppress; App. 18).

Standard of Review:

"The district court's interpretation of Iowa Code Section 804.20 is reviewed for errors at law." *State v. Walker*, 804 N.W.2d 284, 289 (Iowa 2011). The district court's suppression ruling shall be affirmed if the court correctly applied the law and substantial evidence supports the court's fact-finding. *Id.*

Merits:

A. THE CIRCUMSTANCES WHERE SECTION 804.20 APPLIES ARE NOT IMMEDIATE, AND THEREFORE A PUBLIC SAFETY EXCEPTION IS UNNECESSARY

If it ain't broke, don't fix it. The state's request to apply the "public safety doctrine" to Section 804.20 is a solution in need of a problem. Applying this unnecessary exception would give law enforcement the green light to disregard a person's assertion of their Section 804.20 rights. The state's argument fails as Section 804.20 would not impede questioning in emergency situations as contemplated by the "public safety doctrine." Also, the court should not undermine Section 804.20 by adopting such a broad exemption. By reviewing the "public safety doctrine" in the context of *Miranda*, and then comparing it to the situations presented by Section 804.20, it is clear why such an exception is unnecessary.

In its landmark *Miranda* decision, the United States Supreme Court announced the general rule that the prosecution in a criminal case may not use a statement "stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). As a basis for the rule, the *Miranda* Court explained that to effectively combat the "inherently compelling pressures" of custodial interrogation, an accused must be "adequately and effectively apprised" of rights associated with the interrogation. *Id*. at 467.

In *New York v. Quarles*, the court "modified" *Miranda* by creating the "public safety exception." 467 U.S. 649 (1984). The *Quarles* Court considered whether an officer "was justified in failing to make available to respondent the procedural safeguards associated with the privilege against compulsory self-incrimination since *Miranda*." *Id*. at 655. The Court ruled that "overriding considerations of public safety" justified the officer's "questions devoted to locating the abandoned weapon" without a *Miranda* warning first. *Id*. at 651. It then stated that application of the public safety exception was limited to situations involving an "immediate" public safety concern. *Id*. at 657, 658, n. 8. The Iowa Supreme Court has adopted *Quarles*, holding that similar factual circumstances within the narrow scope permit brief emergency interrogation. *In Int. of J.D.F*., 553 N.W.2d 585, 588 (Iowa 1996).

The significance of *Quarles* and its progeny, however, is that Section 804.20 would not have applied in any of these situations and does not require any emergency exceptions.

Section 804.20 confers a statutory right to call a family member or attorney. This section applies to all arrestees, not just drunk drivers. *State v. Senn*, 882 N.W.2d 1, 7 (Iowa 2016). Once the right is invoked, the statute

"requires peace officers to take some affirmative action to permit the communication." *State v. Hicks*, 791 N.W.2d 89, 94 (Iowa 2010). Section 804.20 "applies to the period after arrest but prior to the formal commencement of criminal charges." *State v. Robinson*, 859 N.W.2d 464, 487 (Iowa 2015). Section 804.20 affords an individual a limited statutory right to counsel and family before making important decisions. *State v. Vietor*, 261 N.W.2d 828, 831 (Iowa 1978).

Most significantly, Section 804.20 does not require the phone call to occur *immediately*; rather, "communication with attorneys, relatives, and friends normally does not attach until the arrestee is brought to a place of detention such as a police station or a jail." *State v. Davis*, 922 N.W.2d 326, 334 (Iowa 2019). In *Davis*, the defendant requested to speak to his wife at the scene of the traffic stop. *Id*. at 329. He argued that law enforcement should have honored the request immediately, prior to having field sobriety tests conducted. *Id.* The court held the defendant was "entitled to the opportunity to place a phone call 'without unnecessary delay' only after being arrested and brought… into the jail's intake room." *Id.* at 335. The court reasoned that allowing for an immediate phone call when merely detained would entitle defendants to make phone calls during any traffic

stop, or even require a full consultation with counsel on the side of the road. *Id.* at 334. The court found that this "makes no sense and is contrary to section 804.20's text" *Id.* The court's ultimate holding is that Section 804.20 must be honored once brought to the jail, and not merely after arrest or detention. *Id.*

Given the *Davis* case, it is evident that Section 804.20 would not hinder the type of questioning envisioned by *Quarles* and its progeny. The police in *Quarles* were searching for a suspect who allegedly raped a woman, possessed a firearm, and entered a nearby supermarket. *Quarles*, 467 U.S. at 652. Police arrived at the supermarket, quickly spotted the defendant, and detained him after a brief pursuit. *Id*. However, when detained, the defendant had no gun on him. *Id.* It was at this time, police questioned the defendant about the firearm. *Id.* Not at the police station, but at the scene. According to the *Davis* decision, if the defendant in *Quarles* had immediately invoked Section 804.20 by requesting to speak with his mother, law enforcement would not have been required to comply with the request until they arrived at the police station.

Similarly in *J.D.F.*, law enforcement spotted the defendant with a gun and pursued him through a residential neighborhood before finding and

arresting him. 553 N.W.2d at 586. Like *Quarles*, the defendant was found with no gun, raising concerns that it had recently been discarded. *Id*. Immediately following his arrest, the defendant was questioned about the firearm at the crime scene. *Id*. Again, even if the defendant invoked Section 804.20 at the scene, the right would have only attached after he was brought to the jail or police station.

Within the framework of Section 804.20, the public safety exception is neither necessary nor required. In instances where a legitimate concern arises regarding a missing firearm, and its possible implications for public safety, questions pertaining to the whereabouts of that weapon would be promptly conducted at the location of the incident and immediately following an arrest. As in this case, emergency-related questioning would not occur at the police station after significant time has passed.

Finally, it should be noted that there is a significant difference between *Miranda* and Section 804.20: *Miranda* is merely a tool to ensure that subjects of interrogation are made aware of their rights. Section 804.20 is itself the right. *See State v. Lowe*, 812 N.W.2d 554, 580 (Iowa 2012)(noting the distinction of public safety exception applying to *Miranda* warnings, and defendant's invocation of counsel). Applying the public safety

exception in this instance would be analogous to extending its applicability to situations in which the accused exercises their right to remain silent or seek legal counsel, thereby substantially expanding the existing rule. This circumstance does not permit such a determination, and this is not the case to erode those rights.

B. THE CIRCUMSTANCES OF THE ALLEGED THREAT TO PUBLIC SAFETY ARE INSSUFICIENT TO SUPPORT AN APPLICATION OF THE PUBLIC SAFETY EXCEPTION TO SECTION 804.20 IN THIS CASE

The public safety exception allows for a denial of a *Miranda* warning as a necessary evil of situational needs. *J.D.F.*,533 N.W.2d at 588. By the state's reasoning, this concept would extend to Starr's denial of his Section 804.20 right. A public safety exception to Section 804.20 is impermissible on a conceptual level, but even assuming *arguendo* that it would apply, the practical circumstance of this case would not meet the "sufficient exigency" standard employed by relevant case law.

The key here is that the public safety exception is legitimate only in circumstances where "sufficient exigency" justifies the infringement. Case law has provided varied examples of the situations that meet this standard in *Quarles*, *J.D.F.* and other relevant cases. These narratives describe

spontaneous and volatile instances where an officer's decision making is almost reflexive. In these cases, the inciting actions and potential consequences are immediate and bound to a specific, public location.

Turning back to the seminal cases on the issues, *Quarles* and *J.D.F*. both found:

a. A suspect observed with a firearm by a witness and in *J.D.F.*, by law enforcement and with a specific location.
b. A suspect apprehended by law enforcement within a matter of minutes or seconds of being spotted.
c. The suspect leading law enforcement on a short pursuit, lasting only minutes.
d. The suspect being found without a firearm.
e. Law enforcement having ***strong*** circumstantial evidence that the suspect had, within the few minutes before apprehension, ditched the firearm in a public area.

Quarles, 467 U.S. at 652; Cf. *J.D.F.*,533 N.W.2d at 587.

It is clear that the circumstances which justify this exception are not ambiguous, but narrowly bound if the threat is clear and immediately pressing. The instant case does not align with these circumstances and simply did not involve a pressing threat to public safety.

Most importantly, there was no evidence that the missing gun was in public space. The firearms in question were reported stolen on November 7, 2022, but Starr was not located until the following day, more than 36 hours after the burglary. (Supp. Tr. pg. 5 ln. 6-10). The only connection that Starr

had to the firearms was that he had reportedly run in the same direction as the burglary. (Supp. Tr. pg. 7 ln 10-13). There was no specific area that was being searched for the firearms. (Supp. Tr. pg. 9 ln. 6-18). In fact, Det. Grimsley's theory was that the firearms were "stashed" somewhere as opposed to being discarded arbitrarily in public. (Supp. Tr. pg. 21 ln. 3-4). While the Det. Grimsley refers to a school lockdown, there was no lockdown the following day while the firearms remained unaccounted for. (Supp. Tr. pg. 19 ln. 8). There was no suspicion that there was an accomplice. (Supp. Tr. pg. 20 ln. 24).

Yet Det. Grimsley cites the fact that the guns were unaccounted for to support his claim that there was a threat to public safety:

> "They were unaccounted for. We didn't know where they could have gone. We didn't know if they were stashed somewhere. The—they 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."

(Supp. Tr. pg. 9 ln. 7-13). As he stated, this was only a theory. This speculation was unsupported by evidence and uncorroborated by any testimony or witness. There was no immediate threat to public safety, but instead a hypothetical possibility that a threat existed. Given the information

available to the officers at the time, it is equally, if not more likely, that the weapons were concealed in a private, hidden location.

It is unreasonable to conclude that someone would carry two large weapons on his person for multiple hours when the threat of arrest is looming. Hypothetically, Starr would have had ample time to consider a long-term location to store the stolen weapons, and there is no conceivable reason that this location would be in public either. The same danger that anyone can find a weapon hidden in public applies to the defendant's own determinations too. If anyone could find them, it would not be in their own interest to hide them in public. There was simply no conceivable motive for Starr to hide guns in public and no evidence to further that idea.

This is important, because the assumption that the guns were in public is foundational to the perception that there was a valid threat to public safety. The reality is that there was no imminent danger to the public, and without evidence to indicate there was, the police were flawed and unjustified in violating Starr's Section 804.20 rights even if there was a public safety exception. Even though the threat to public safety is a subjective determination made by officers, that determination must be a tenable and justifiable consideration.

The district court seemingly recognized this in their ruling on Starr's claims regarding his *Miranda* rights. Starr was read his *Miranda* rights, but he refused to sign a written statement acknowledging that. The Court ruled that he was still properly advised and noted the lengthy conversation that was had regarding his *Miranda* rights. The order importantly notes that, because he was read his Miranda rights, there was "no true application of the public safety exception." (Ruling on MTS; App. 26).

This is a salient point when considering whether a similar application would apply to Starr's Section 804.20 rights should an exception be made. If the threat to public safety was indeed an immediate danger, then it would have been unreasonable to have read Starr his *Miranda* rights, let alone press the issue for a considerable time. That fact that Starr was read his *Miranda* rights but was denied his phone call represents a double standard if the justification is the same threat to public safety. If the state's proposal is to extend the framework of the public safety exception, then logically Starr's case would not fall under that model. The district court's finding of "no application" of the exception to his *Miranda* warning would contradict a different finding regarding his other rights. Starr and Det. Grimsley's back-

and-forth conversation about signing for his *Miranda* rights indicates that there was ample time to both recognize and discuss his rights.

This speaks to how Det. Grimsley's interrogation contradicts a finding of a threat to public safety. The language that case law uses to describe incidents where public safety exceptions are justified is in stark contrast to Starr's protracted interrogation. The *Quarles* court was founded on a decision that was made "instinctively" and "in a matter of seconds." *Id.* at 659. The cases quoted above all involve officers on the scene asking questions in the heat of the moment. Starr was arrested, taken to a different location, and held for nearly an hour before being questioned. This is a far cry from the instinctive, heat-of-the-moment scenario described in *Quarles.* This illustrates how the instant case does not align with the situations that a public safety exception was intended to cover.

Instead, Starr's interrogation more closely mirrors what was analyzed in *State v. Deases*. Here, *Deases* was detained after assaulting another inmate with a shank. The state argued that a public exception applied to Deases' testimony in custody because there was a possibility that there was another shank somewhere in the prison which could be found and used. *State v. Deases*, 518 N.W.2d 784, 791 (Iowa 1994). The *Deases* court ruled that

the public safety exception did not apply because there was no "immediate threat." *Id.*

This is important because the idea of a threat to public safety would only be a subjective perception of law enforcement officials. However, *Deases* establishes that the possibility or the subjective fear of a threat is insufficient. The threat needs to be immediate and clearly justifiable. In the same way officials were assuming there was another shank, Det. Grimsley assumed the weapons were in public and not hidden in a private location. That assumption alone is not sufficient to satisfy the "sufficient exigency" described in *J.D.F* even if a public safety exception was extended to Section 804.20 rights.

C. LAW ENFORCEMENT DENIED STARR HIS 804.20 RIGHTS AS OPPOSED TO A MERELY DELAYING.

The state seeks to justify the delay in allowing Starr to make his call as being necessary. While this perspective may seem admirable, what transpired was neither necessary nor reasonable. The discussion about reasonable delay must begin with what Det. Grimsley told Starr about calling his father:

> "**Faron Starr**: 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?

> **Detective Grims...:** Well, that's the thing. That wouldn't happen today."
>
> (Amended Motion to Suppress; App. 18).

Ultimately, Det. Grimsley's response is not acceptable under any circumstances. Starr was not just delayed the opportunity to make his call, but for all intents and purposes, denied this right. In response to Starr's request to call his father, Det. Grimsley flat out said "that wouldn't happen today." (Amended Motion to Suppress; App. 18). For Starr, this would mean that there was no way that he could contact the outside world before or during the interrogation he was facing.

"When a suspect understands his (expressed) wishes to have been ignored ... in contravention of the 'rights' just read to him by his interrogator, he may well see further objection as futile and confession (true or not) as the only way to end his interrogation." *Davis v. U.S.*, 512 U.S. 452, 473 (1994) (Souter, J., concurring in the judgment). There was nothing to affirm in Starr's mind that he still had that right, and this would weigh on his determinations of if, and when, he should speak in order to protect his interests.

Starr was later given the chance to make a call, but this was only after Starr had made incriminating admissions. Det. Grimsley's response was

inaccurate, untrue, and can be inferred to be nefarious. It was only when the detective was able to elicit incriminating statements did that opportunity occur. The Courts have insisted that "law enforcement officers **not play games** when faced with a request from a person in custody to communicate with the outside world after being arrested." *State v. Lyon*, 862 N.W.2d 391, 400–01 (Iowa 2015)(emphasis added). This cannot support the idea that it was only a delay because the call was only offered after Starr had self-incriminated.

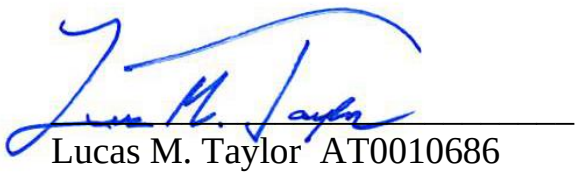
Therefore, the call itself could not have impacted the crucial part of Starr's determination of making those statements. *State v. Vietor* established that the legislative purpose behind Section 804.20 is time sensitive in nature and provides for consultation "***before*** making the important decision to take or refuse the chemical test under implied consent procedures." 261 N.W.2d 828, 831 (Iowa 1978)(emphasis added). Put differently, that later call was robbed of its efficacy and thus does not satisfy Section 804.20's mandate. Thus, the characterization that Starr was only delayed and not denied the opportunity to exercise his right is improper.

CONCLUSION

The Appellee, Faron Alan Starr, respectfully requests this Court affirm the district court's order suppressing evidence pursuant to a violation of Starr's Section 804.20 rights.

REQUEST FOR ORAL SUBMISSION

Counsel requests that his counsel be heard orally by the court regarding all matters addressed herein.



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CERTIFICATE OF COST

I certify that the cost of printing this brief was $2.50.

/s/Lucas Taylor_____

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because the brief contains 4,151 words, excluding the parts

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_/s/ Lucas Taylor_____ 11/13/2023
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