IN THE SUPREME COURT OF IOWA
Supreme Court No. 24-0462
Buchanan County No. FECR086708

STATE OF IOWA,
Plaintiff–Appellee,

vs.

AMADEUS D. MCCLAIN,
Defendant–Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR BUCHANAN COUNTY
THE HONORABLE JOHN J. SULLIVAN, JUDGE

BRIEF FOR APPELLEE

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether there was probable cause to search a vehicle and a backpack within under the automobile exception when an officer smelled marijuana emanating from the vehicle and the driver admitted there had been contraband in the vehicle in the past.

ROUTING STATEMENT

Retention is unnecessary. Error on McClain's appellate challenges were not preserved. This case is readily decided on existing legal principles. Transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

NATURE OF THE CASE

After he provided a conditional guilty plea to manufacturing, delivering, or possessing with the intent to deliver marijuana and failure to affix a tax stamp under Iowa Code sections 124.401(1)(d) and 453B.12, Amadeus McClain appeals the district court's suppression ruling. The district court imposed a five-year sentence on each count and ordered them to be served concurrently to one another and to his convictions in another state. D0069, Judgment at 1–2 (3/8/2024).

STATEMENT OF THE FACTS

Between the suppression hearing and the minutes of testimony McClain accepted in providing his guilty plea, the following facts are available. *See* D0056, Written Guilty Plea at 1 ("I agree that the Court may rely upon the Minutes of Testimony for a further factual basis for my guilty plea.") (12/22/2023).

On July 9, 2023, Iowa State Patrol Troopers Baumgartner, Brooks, and Grim were working an aircraft assignment in Buchanan County. D0011,

Minutes of Testimony at 7 (7/24/2023); D0081, Motion to Suppress Tr. at 6:12–7:9 (10/10/2023). Grim would fly overhead in an aircraft pacing traffic to identify speeding drivers. D0081 at 23:8–26:9. Near 4:48 in the afternoon, Grim observed a white Chrysler 200 car going around 80 miles per hour in a 65-mile-per-hour zone. D0081 at 26:23–27:25; D0011 at 7. He reported his observations to Baumgartner who began following it and waited for Grim to confirm he was behind the correct vehicle. D0011 at 7. Once Grim did so, Baumgartner initiated a traffic stop. D0011 at 7; D0081 at 7:10–23; 33:10–24. Brooks was his field training officer. D0081 at 5:14–6:19.

Baumgartner approached the vehicle to meet the driver. D0081 at 33:20–34:7. At the passenger side window, he observed there was the driver and three passengers in the vehicle, McClain was a passenger in the back. D0011 at 7; D0081 at 35:19–25. Because he was stopping the vehicle for speeding, Baumgartner sought the driver, Corvette Harris's license, registration, and insurance. D0011 at 7; D0081 at 35:9–14. He returned to his service vehicle and began typing a citation. D0011 at 7. At this time, Baumgartner learned Harris' license was barred, but that she had a temporary restricted license and needed a specific form to drive. D0011 at 7.

When Baumgartner returned to ask Harris about this, he could now smell the odor of marijuana coming from the vehicle. D0011 at 7; D0081 at 36:18–37:11. He asked Harris whether there was "anything in the vehicle that shouldn't be in the vehicle, specifically marijuana." D0011 at 7; D0081 at 37:12–20. Harris stated there had been "marijuana but there isn't any in the vehicle now." D0011 at 7. Baumgartner requested all the occupants to exit the vehicle and stand by his service vehicle with Brooks. D0011 at 7; D0081 at 37:21–24.

Baumgartner searched the vehicle and containers within the vehicle that could contain marijuana, including a garbage bag and a Jansport backpack in the car's trunk. D0011 at 7; D0081 at 38:18–40:6. Inside the garbage bag was a package of "cannabis infused" ramen noodles. D0011 at 7. As Baumgartner began looking inside the Jansport backpack he saw a pair of men's jeans—McClain was the only male occupant of the vehicle. D0011 at 7; D0081 at 39:13–40:14. Noticing that McClain was visibly nervous and pacing, Baumgartner asked McClain for his name. D0011 at 7; D0081 at 40:14–17. He then found a large plastic bag containing marijuana, packaged marijuana, loose cash, and McClain's identification. D0011 at 7; D0081 at 39:20–40:14. Baumgartner looked back and saw McClain trying to walk onto the highway. D0011 at 7; D0081 at 40:17–19. When Brooks

asked him to stop and come back to be patted down, he said "No." and ran across the westbound lanes, median, and eastbound lanes of the highway. D0011 at 7, 8; D0081 at 40:19–41:2. The troopers pursued and arrested him. D0011 at 7, 8.

Baumgartner completed his search and found no other contraband. D0011 at 7. Harris was released on citation and McClain was arrested. D0011 at 7.

After the State filed its trial information, McClain moved to suppress, urging:

> 1. Law Enforcement Officers violated the Defendant's 4th Amendment right under the US Constitution and Iowa Constitution Article 1 Section 10 by searching the vehicle he was a passenger in without a warrant and opened a backpack in the trunk that was closed.
>
> 2. Law Enforcement officer opened the trunk and observed a Jansport Backpack which was closed.
>
> 3. Law Enforcement Officer opened the backpack and searched the contents and found the Marijuana that is the premise of this prosecution.
>
> 4. Defendant alleges that the search was violation of his rights as enumerated above and as such the Marijuana should be suppressed.

D0016, Motion to Suppress at 1 (9/5/2023). After a suppression hearing, the district court denied McClain's motion and found Baumgartner's search of Harris's car and the containers within was authorized under the

automobile exception to the warrant requirement. D0031, Suppression Ruling at 1–3 (10/12/2023). McClain entered a conditional guilty plea and this appeal followed. *See generally* D0056 at 1–7; D0069 at 1–3; D0074, Notice of Appeal at 1 (3/14/2024).

JURISDICTIONAL STATEMENT

Appellate courts "generally lack jurisdiction over direct appeals from guilty pleas," except when the plea is to a class "A" felony or the defendant establishes "good cause." *State v. Rutherford*, 997 N.W.2d 142, 145 (Iowa 2023) (discussing Iowa Code section 814.6(1)(a)(3)). As of January 1, 2023, section 814.6(3) provides that appellate courts may also have jurisdiction over appeals following conditional guilty pleas that reserve an issue for appeal. Under the statute, the court has jurisdiction over only conditional guilty pleas that were "entered by the court with the consent of the prosecuting attorney and the defendant or the defendant's counsel" and "when the appellate adjudication of the reserved issue is in the interest of justice." Iowa Code § 814.6(3); *accord* Iowa R. Crim. P. 2.8(2)(b)(9).

Here, the parties stipulated to the entry of a conditional plea, which the court accepted. *See* D0056 at 3–4 ("I enter this plea as a conditional plea under Rule 2, with approval of the State and the Court, to allow me to appeal an unfavorable ruling on my pretrial suppression motion, and if

appeal results in reversal of the ruling then my plea will be withdrawn."). But the statute still requires appellate adjudication of McClain's "reserved claim" be "in the interest of justice." Iowa Code § 814.6(3). That standard is not met here.

McClain has abandoned the suppression theory he presented to the district court in favor of two new theories on appeal. *Compare* Appellant's Br. 23–24, 25–31 *with* D0081 at 56:1–57:22; 61:6–62:5. Below he claimed that the troopers' search was an unlawful search incident to arrest under *State v. Gaskins*, 866 N.W.2d 1 (Iowa 2015). D0081 at 56:1–58:11. On appeal he challenges the record establishing probable cause to search and whether the automobile exception should be abandoned. Appellant's Br. 23–24, 25–31. These are not the "reserved issue[s]" section 814.6(3) grants this Court jurisdiction to review.

Likewise, it is not "in the interest of justice" to litigate and adjudicate legal theories for relief McClain never presented to the district court. *See, e.g.*, *State v. Tobin*, 333 N.W.2d 842, 844 (Iowa 1983) ("The orderly, fair and efficient administration of the adversary system requires that litigants not be permitted to present one case at trial and a different one on appeal."). Nor finally is it in the interest of justice for the Court to permit either party to enter an agreement and then breach it to obtain a more

favorable result. *See generally State v. Patten*, 981 N.W.2d 126, 131 (Iowa 2022) (discussing breaches of a plea agreement); *State v. Ceretti*, 871 N.W.2d 88, 91–92 (Iowa 2015) (citing *State v. Potts*, 240 N.W.2d 654, 657 (Iowa 1976), appellate success "should not turn on defense gamesmanship").

Under ordinary circumstances, the State might not dispute appellate jurisdiction because the parties stipulated in the district court that the suppression issue would be reserved for appeal. D0056 at 2–5; *see, e.g., State v. Sampson*, No. 23-1348, 2024 WL 3688526, at *1 n.2 (Iowa Ct. App. Aug. 7, 2024) (finding section 814.6(3) was satisfied due to lack of resistance from state). And it would ordinarily be unfair for the State to argue against the terms of the plea agreement on appeal; something a reviewing court could potentially view as an impermissible attempt to deprive the defendant of the benefit of the parties' bargain. *See, e.g.*, *Patten*, 981 N.W.2d at 131. Neither of these ordinary circumstances apply.

Here, McClain breached the parties' agreement by substituting suppression arguments. The prosecutor agreed to a conditional plea on the claims and record McClain made below; the prosecutor may have developed a different record or may not have cast the same bargain had he known McClain would shift advocacy on appeal. And even if this Court were

to deny review, McClain has already received significant benefits from his plea: a favorable sentencing disposition in which all counts ran concurrent to one another his judgments in Wisconsin as well as the State dismissing additional related charges. *See* D0056 at 2–3; D0069 at 3. Denying review of the unreserved issues will have no impact on that benefit.

And aside from relying on the adversarial process, this Court has an independent duty to police its own jurisdiction and authority. *See Vasquez v. Iowa Dep't of Hum. Servs.*, 990 N.W.2d 661, 667 (Iowa 2023). It should do so here and conclude that addressing unreserved—and unpreserved—suppression issues is not in the interest of justice. *See, e.g.*, *DeVoss v. State*, 648 N.W.2d 56, 61 (Iowa 2002) ("[O]ne party should not ambush another by raising issues on appeal, which that party did not raise in the district court."). This Court should dismiss the appeal.

ARGUMENT

I. Even if this Court bypasses McClain's failure to preserve error, it should affirm. Trooper Baumgartner smelled marijuana emanating from the vehicle in which McClain was a passenger. This was probable cause to search the vehicle and McClain's backpack within.

Preservation of Error

Error preservation has three core requirements: a party's presentation of a (1) timely and (2) specific argument, and (3) a ruling from the court on the same. *See* Thomas A. Mayes & Anuradha Vaitheswaran,

Error Preservation in Civil Appeals in Iowa: Perspectives on Present Practice, 55 Drake L. Rev. 52, 68–70 (2006). McClain's present claims suffer from the absence of the second and third requirements—while he moved to suppress, McClain did not present either of the claims he does now, and the district court did not rule on them.

Below, his written suppression motion advanced an undifferentiated claim the search of his backpack was impermissible under the Fourth Amendment and Article I, Section 10 of the Iowa Constitution.[1] D0016 at 1. At the suppression hearing he clarified he believed the troopers conducted an unlawful search incident to arrest that violated the Iowa Constitution's protections as described in *Gaskins*, 866 N.W.2d 1. D0081 at 56:1–58:11. McClain did refer to electronic warrants, but as to container searches under *Gaskins*:

> The facts of *Gaskins* are not all that dissimilar to this case. There are some variations as often happens, but I think the principle clearly applies. The majority of the courts stated a warrantless search is presumed unreasonable unless an exception applies. I'm not aware of any exception that says probable cause makes it okay if I smell something. That would require a warrant which is as trooper Baumgartner admitted is fairly easy to get these days and indeed Chief Justice Cady in a concurring opinion in *Gaskins* observed exactly that point. Iowa court

[1] Defense counsel later remedied this mistake at argument during the suppression hearing. D0081 at 55:1–15; 56:1–8; 57:14–22.

system is now the first court system in the nation to be totally electronic for all users at all levels, and a police officer has the capability to access the court system from the computer in a police vehicle to request a search warrant based on probable cause at all times of the day and night. In the future warrants will likely be received within a short period of time within the course of a roadside encounter. That's Chief Justice Cady's concurring opinion in *Gaskins*, but *Gaskins* analyzes the searches and variations in search and seizure of automobile law and falls on—ultimately on this principle. There is a reaching distance rationale for searches incident to arrest. That means within basically the position of the suspect's place in the car as to whether he can hide contraband or seize a weapon or something like that. *Gaskins* notably the search involved a search of a van which presumably has a fairly large passenger compartment, and the Iowa Supreme Court struck down a warrantless search that where a roadside officer went through a safe within the van and said, no, you can get a warrant for that.

I think that's exactly the outcome that should be involved here. And the specific—the Supreme Court specifically said we decline to adopt *Gant's* alternative evidence gathering rationale for warrantless searches incident to arrest under the Iowa constitution because that would permit the search incident to arrest exception to swallow completely the fundamental textual rule in article 1, section 8 that searches and seizures be supported by a warrant.

. . .

I ask the court to suppress the search of the trunk and the search of the Chrysler in its entirety because the passengers, A, were not arrested at any time relevant to the search, and, B, they could not possibly have search incident to arrest, couldn't possibly justify it

> because they weren't anywhere within reach of the car.

D0081 at 56:1–57:22.

At no point below did McClain challenge Trooper Baumgartner's ability to detect the odor of marijuana, ask the court to not follow *State v. Olsen*, 293 N.W.2d 216 (1980), revisit *State v. Storm*, 898 N.W.2d 140 (Iowa 2017), or "no longer allow a *per se* automobile exception." [2] Appellant's Br. 25, 28. Counsel's argument to the suppression court suggested either an unfamiliarity with the automobile exception or a mistaken belief *Gaskins* already foreclosed this search: "I suggest that the Iowa Law Enforcement Academy needs to update its training if it is still relying on 1925 U.S. Supreme Court ruling that is long out-of-date for this sort of thing." *See* D0081 at 55:3–58:11.

[2] In its written suppression ruling, the district court characterized the motion to suppress as "The Defendant is asking this Court to abandon the automobile exception to the warrant requirement." D0031 at 2. While that might have been the practical consequence of granting suppression, it was not what McClain asked for. A portion of counsel's argument suggested unfamiliarity with the automobile exception altogether: "I'm not aware of any exception that says probable cause makes it okay if I smell something." D0081 at 56:1–14. The district court's stray commentary did not preserve error on a claim McClain did not raise.

And after the prosecutor pointed out the automobile exception applied, McClain did not pivot to address it. Instead, defense counsel doubled down on containers and search incident to arrest:

> I would simply point out that of the authorities that the county attorney has cited, not a one of them is a federal authority. So as far as I'm concerned, my argument that *Arizona v. Gant* applies here, still stands, and the state followed *Gant* in terms of limiting the scope of automobile searches in the *State versus Gaskins*. I noticed that the authorities that the —primarily the authorities that the county attorney cites are court of appeals decisions, and apparently at least some of them unpublished which most of them are these days. And there again, the *Gaskins* and its holding I think clearly indicate that there is, A, an expectation of privacy in the vehicle for both driver and for passengers. I would note that *Gant* also involved—maybe it was mentioned before—also involved a smell of marijuana and the—in that case the driver was cited for basically admitted I have a blunt and the officer said, oh, I think there is more than that and just continues with the search. And the court says no, not going to allow that.
>
> I think that the court should recognize the authority that the Iowa Supreme Court and the U.S. Supreme Court establish in these circumstances and follow it.

D0081 at 58:14–60:7; 60:22–61:5; 61:9–62:5.

McClain's attempts below to shoehorn this case as a warrantless and flawed "search incident to arrest" to obtain suppression was a tactical decision with consequences.

He did not present the suppression court either of his present claims that (1) the record was deficient as to the basis for troopers' ability to discern marijuana odor or that (2) the automobile exception should be abandoned. *Compare* Appellant's Br. 23–24, 25–31 *with* D0081 at 56:1–57:22; 61:6–62:5. Had he argued the trooper was not qualified to detect the odor of marijuana, the State could easily have remedied any deficiency with follow-up inquiry. Likewise, it may have established a more developed record as to the status of the Iowa's statewide electronic warrant program—a program still in the pilot phase at the time of the challenged search. *See* Iowa Supreme Ct. Supervisory Order, *In the Matter of Establishment of the Electronic Search Warrant Pilot Project, Second Amended Memorandum of Operation* at 1, 6 (9/1/2022) *available at* https://www.iowacourts.gov/collections/750/files/1614/embedDocument ; *see also* Iowa Supreme Ct. Supervisory Order, *In the Matter of Establishment of the Electronic Search Warrant Pilot Project, Amended Order* at 1 (9/5/2024) *available at* https://www.iowacourts.gov/collections/871/files/1978/embedDocument . But because McClain did not raise these as grounds to suppress the search, neither the State nor the district court had the opportunity to consider them. This Court should not permit McClain to now pursue new

theories to attack the court's suppression ruling. *See State v. Pickett*, 671 N.W.2d 866, 869 (Iowa 2003); *State v. Hanes*, 981 N.W.2d 454, 460 (Iowa 2022) ("A supreme court is 'a court of review, not of first view.'" (quoting *Ripperger v. Iowa Pub. Info. Bd.*, 967 N.W.2d 540, 552 (Iowa 2021)).

And having abandoned the *Gaskins* claim he did preserve below by deciding not to re-raise and brief it, there is no error for this Court to review. *See State v. Jentz,* 853 N.W.2d 257, 262 (Iowa Ct. App. 2013); *State v. Adney*, 639 N.W.2d 246, 250 (Iowa Ct. App. 2001) ("When a party, in an appellate brief, fails to state, argue, or cite to authority in support of an issue, the issue may be deemed waived."); Iowa R. App. P. 6.903(2)(8)(3). It may summarily affirm without opinion. *See* Iowa Ct. R. 21.26.(1)(a), (c), (d), (e).

Standard of Review

This Court's review of for a constitutional search is de novo. *State v. Rincon*, 970 N.W.2d 275, 280 (Iowa 2022). Competing interpretations of the Iowa Constitution are evaluated through "exercise of our best, independent judgment of the proper parameters of state constitutional commands." *State v. Short*, 851 N.W.2d 474, 490 (Iowa 2014). The ultimate touchstone for resolving conflicts between two proposed interpretations of the Iowa Constitution is persuasiveness. *See id.* The Court defers to the

district court's factual findings but is not bound by them. *State v. Scheffert*, 910 N.W.2d 577, 581 (Iowa 2018).

Merits

Already discussed, McClain brings two unpreserved challenges to the district court's suppression ruling. The State will answer why this Court should still affirm out of an abundance of caution. *See State v. Zacarias*, 958 N.W.2d 573, 587 n.3 (Iowa 2021). First, the lower court correctly applied the automobile exception. Next, this Court should reject McClain's challenge to the probable cause supporting the search and his request to overrule *Olsen* to jettison the automobile exception altogether.

A. Because it credited the troopers' testimony, the district court correctly found the automobile exception authorized this search.

The Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution both safeguard the right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Iowa Const. art. I, § 8. There is no linguistic distinction between the two, and thus under either constitution, warrantless searches are generally unreasonable. *See, e.g.*, *State v. Lewis*, 675 N.W.2d 516, 522 (Iowa 2004). But, as they explained during the suppression hearing and the suppression court found, Troopers Brooks and Baumgartner searched Harris' car and contents under

the automobile exception. D0081 at 13:3–14:2; 18:4–25; 37:21–39:15; 45:17–46:24; 51:20–52:9; 53:8–54:2.

This exception to the warrant requirement exists under both constitutions and permits law enforcement to search without first obtaining a warrant when they have probable cause to believe a vehicle or the belongings within that vehicle contain contraband. *Rincon*, 970 N.W.2d at 280. The exception does not require a separate, fact-specific exigency finding. *Id.*; *see also Maryland v. Dyson*, 527 U.S. 465, 465 (1999) (per curiam) ("[U]nder our established precedent, the 'automobile exception' has no separate exigency requirement."). The reason in multi-faceted; vehicles are inherently mobile and are subject to diminished expectations of privacy due in part to pervasive and continuing regulation of them. *See Storm*, 898 N.W.2d at 145–47. Any heightened expectation of privacy is unreasonable because an automobile's "function is transportation and it seldom serves as one's residence or as the repository or personal effects . . . [It] has little capacity for escaping public scrutiny. It travels public thoroughfares where both its occupants and its contents are in plain view." *Cardwell v. Lewis*, 417 U.S. 583, 590 (1974). What is more, the Iowa Supreme Court has observed that "rigorous enforcement" of the warrant requirement does not significantly advance civil liberty interests in the

automobile search context. *See Storm*, 898 N.W.2d at 155 ("Requiring a warrant for an automobile search thus does little to protect privacy or advance civil liberty."). Thus, if the automobile "is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment . . . permits police to search the vehicle without more." *Michigan v. Thomas*, 458 U.S. 259, 261 (1982) (per curiam).

The relevant question, then, was whether the troopers had probable cause to search Harris's vehicle. An officer has probable cause to search a vehicle "'when the facts and circumstances would lead a reasonably prudent person to believe that the vehicle contains contraband.'" *State v. Hoskins*, 711 N.W.2d 720, 726 (Iowa 2006) (quoting *State v. Gillespie*, 619 N.W.2d 345, 351 (Iowa 2000)). Put another way, the officer's basis for searching "must be based on facts that would justify a magistrate to issue a warrant, even though the officers [did] not actually obtain[ ] a warrant." *Hoskins*, 711 N.W.2d at 726. Iowa courts have routinely found an officer's detection of marijuana odor meets this standard. *See, e.g.*, *State v. Hillery*, 956 N.W.2d 492, 501 (Iowa 2021) ("[W]e reiterate that under our precedent the smell of marijuana on Hillery's person alone supports a probable cause finding."); *State v. Watts*, 801 N.W.2d 845, 854 (Iowa 2011); *State v. Luckett*, No. 21-1808, 2022 WL 3064782, at *2 (Iowa Ct. App. Aug. 3, 2022) ("An officer's

detection of the smell of marijuana coming from a vehicle establishes probable cause to search the vehicle.").

Under these established principles, the district court correctly concluded the automobile exception authorized this search. D0031 at 1–2; *see also* D0081 at 11:2–24; 18:4–25; 37:21–38:2; 38:12–40:6; 50:7–52:9; 52:23–54:6. It credited Baumgartner's testimony he smelled marijuana at the window, as well as Brooks' testimony about McClain's nervousness and interest in the search. D0031 at 1–2, D0081 at 8:3–9:21; 10:5–16; 13:21–14:6; 34:17–24; 36:18–37:20; 40:7–41:2. The troopers stopped the vehicle for speeding, meaning it was not only "inherently" mobile but was factually mobile, too. D0081 at 26:10–27:24; 33:10–24; *see generally Storm*, 898 N.W.2d at 145, 147–48; *State v. Allensworth*, 748 N.W.2d 789, 795 (Iowa 2008) (concluding automobile exception authorized search of vehicle even after it was removed from the scene). Having made those factual findings, it correctly reasoned

> this matter falls squarely within the automobile exception to the warrant requirement. The Defendant was traveling in a motor vehicle along a busy highway when it was stopped. The trooper smelled the odor of marijuana emanating from the vehicle. The smell of marijuana gave the officer probable cause to search the vehicle.

D0031 at 2; *see Luckett*, 2022 WL 3064782, at *2; *State v. Carter*, No. 18-1502, 2019 WL 2372231, at *6–7 (Iowa Ct. App. June 5, 2019) (reversing district court who suppressed based on conclusion odor of marijuana alone was not sufficient to support search and collecting cases). The lower court's fact findings had a substantial basis in the suppression record and its application of the automobile exception was correct. *Compare* D0031 at 1–3 *with Wyoming v. Houghton*, 526 U.S. 295, 303–07 (1999) ("We hold that police officers with probable cause to search a car may inspect passengers' belongings found in the car that are capable of concealing the object of the search."). There was no error.

B. Training and years of experience provided the basis for Trooper Baumgartner to identify the odor of marijuana. The district court correctly found there was probable cause.

McClain's first challenge to the suppression ruling alleges there "was no evidence admitted on Baumgartner's experience, qualifications, or training in identifying marijuana by smell at the suppression hearing." Appellant's Br. 23. It is easily dispatched.

At the October 2023 suppression hearing, Baumgartner described how he had completed training to become an Iowa State Patrol trooper in March 2023. D0081 at 31:14–19. This was not his only law enforcement experience. He had been an officer for more than five years; he had

graduated from the Iowa Law Enforcement Academy in 2017 and then worked for the Clayton County Sheriff's office and the Waukon police department *before* completing the Iowa Department of Public Safety's training to join the Iowa State Patrol. D0081 at 31:14–32:13; 43:1–44:2. Along with this training and significant employment experience he had conducted several vehicle searches. D0081 at 44:19–45:2. This was more than sufficient evidence to permit the district court to conclude Baumgartner knew how to recognize the distinctive odor of marijuana and to credit his testimony as true. D0031 at 1–2 ("The trooper smelled the odor of marijuana emanating from the vehicle. The smell of marijuana gave the officer probable cause to search the vehicle."); *see Watts*, 801 N.W.2d at 855–56 ("While it might have been preferable if the warrant application had specifically explained how and why the officer was qualified to detect the odor of raw marijuana . . . the application was minimally sufficient under the circumstances" and collecting cases); *State v. McMullen*, 940 N.W.2d 456, 461 (Iowa Ct. App. 2019) (collecting cases). Because the odor provided probable cause, the search of the car and its contents including McClain's backpack was lawful. *See State v. Eubanks*, 355 N.W.2d 57, 59–60 (Iowa 1984). This is not grounds to disturb the district court's suppression ruling.

C. McClain has not persuasively undermined this Court's precedent or the need for the automobile exception.

If this Court reaches it, McClain's second unpreserved challenge requires more discussion than the first. He urges the advent of Iowa's statewide electronic warrant procedures renders the "justification for warrantless searches . . . no longer valid." Appellant's Br. 24. And this, in his view, means the Iowa Constitution's automobile exception adopted in *Olsen*, 293 N.W.2d 216 should be overruled. Appellant's Br. 31. This Court should reject that request for several reasons.

1. McClain's request to overrule Iowa's precedent adopting the automobile exception under our state constitution is underdeveloped.

As the Iowa Supreme Court reengaged with its independence to determine the distinct meaning of Iowa's constitution, its members have repeatedly instructed advocates to make distinct and reasoned state constitutional arguments. *See, e.g.*, *State v. Gibbs*, 941 N.W.2d 888, 903–05 (Iowa 2020) (McDonald, J. concurring); *State v. Effler*, 769 N.W.2d 880, 894–95 (Iowa 2009) (Appel, J., concurring). But seeking a new interpretation of the Iowa Constitution and to overturn precedent to do so imposes an unusually high burden of persuasion on McClain. *See generally Youngblut v. Youngblut*, 945 N.W.2d 25, 43–44 (Iowa 2020) (McDonald,

J. dissenting) (explaining the doctrine of stare decisis and noting that for non-constitutional precedent to be overruled, it must reach a critical mass of wrongness—a high standard that includes whether it has "proved unworkable in practice, does violence to legal doctrine, or has been so undermined by subsequent factual and legal developments that continued adherence to the precedent is no longer tenable."). He does not meet it.

While he points out that the Iowa Constitution is independent of the Federal, he offers no textual or historical explanation why applying the Iowa Constitution requires a different result for automobiles considering the provisions' similar structure and text. *Compare* Appellant's Br. 19–20, 28–31 *with State v. Mumford*, No. 23-1075, ___ N.W.3d ___, 2024 WL 4996593, at *1 (Iowa Dec. 6, 2024) ("The text of article I, section 8 of the Iowa Constitution is materially indistinguishable from the text of the Fourth Amendment," but it remains the Court's duty to "to independently interpret [article I,] section 8 based on its words and history[, and] [d]epending on the issue, this inquiry may lead us to conclude that section 8 provides protections that are the same as, greater than, or less than the protections provided by the Fourth Amendment."). Asking for a different interpretation to reach his preferred result is not enough. Hans Linde, *First Things First: Rediscovering the States' Bills of Rights*, 9 U. Balt. L. Rev.

379, 392 (1980) ("[T]o make an independent argument under the state clause takes homework—in texts, in history, in alternative approaches to analysis. It is not enough to ask the state court to reject a Supreme Court opinion on the comparable federal clause merely because one prefers the opposite result.").

Indeed, there is no textual reason for the analysis to diverge—no provision within the Iowa Constitution describes a greater protection to a person's property than the Fourth Amendment. Iowa Const. art. I, § 8 ("The right of the people to be secure in their . . . effects, against unreasonable seizures and searches shall not be violated[.]"); *cf.* VT. Const. art. 11 and *State v. Savra*, 616 A.2d 774, 779–82 (Vt. 1991). *But see State v. Wright*, 961 N.W.2d 396, 419 (Iowa 2021) ("Wright had an expectation based *on positive law* that his garbage bags would be accessed only by a licensed collector under contract with the city." (emphasis added)). There was little discussion about search and seizure during the 1857 constitutional debates to distinguish the contours of Iowa's protections under its constitution from the Federal Fourth Amendment. *See* 1 *The Debates of the Constitutional Convention of the State of Iowa* 99–103, 201 (W. Blair Lord rep., 1857) (adopting article I, section 8 without amendment or further debate) *see also State v. Brown*, 930 N.W.2d 840, 846–47 (Iowa 2019) ("If the framers

of the Iowa Constitution wanted to create greater search and seizure protections for Iowans, the nearly identical language of article I, section 8 to the Fourth Amendment does not reflect this desire.").

Nor is there historical context to support a different approach to probable cause-based searches of vehicles for contraband. Automobiles were a development that occurred after both constitutions were adopted—there could be no Iowa-specific historical context to support a different "plain meaning" of article I, section 8's text than the Fourth Amendment. *See generally State v. White*, 9 N.W.3d 1, 6–7 (Iowa 2024) (commenting that courts interpreting the Iowa Constitution are bound by the "public meaning" of its words at the time of adoption). And while some of Iowa's early search and seizure precedents suggest an officers' unlawful means of investigation might be tortious, after 1923 Iowa's constitution did not require suppression. *See, e.g.*, *State v. Ward*, 36 N.W. 765, 767 (Iowa 1888) (rejecting constitutional challenge to officer's search of railcar for liquor without warrant, the "officer in this case may have been guilty of a trespass"); *see also State v. Henderson*, 198 N.W. 33, 34, 36 (Iowa 1924) (suggesting without deciding that remedy for unlawful search and seizure of bootlegging vehicle was its release from state custody); *State v. Tonn*, 191 N.W. 530, 535 (Iowa 1923) (abrogating exclusionary rule under state

constitution, reasoning such a rule would "not detract one iota from the full protection vouchsafed to the citizen by the constitutional provisions . . . . A trespassing officer is liable for all wrong done in an illegal search or seizure"). America's mass-adoption of the automobile followed. *See* Orin Kerr, *An Equilibrium-Adjustment Theory of the Fourth Amendment*, 125 Harv. L. Rev. 476, 503–04 (2011) (discussing the 1920's rise in automobile ownership and its relationship with the Prohibition era). Iowa's history provides little support to distinguish article I, section 8 on this point.

And McClain's claim fairs little better under Iowa's more recent precedent. The Iowa Supreme Court rejected McClain's request just seven years ago in *Storm*. *See* 898 N.W.2d at 153–56. That rejection presents *another* reason why this Court should not grant his present one. Before jettisoning its precedent, the Iowa Supreme Court requires a "compelling reason" and "the highest possible showing that a precedent should be overruled." *See Brown*, 930 N.W.2d at 854; *accord. State v. Lee*, 6 N.W.3d 703, 707 (Iowa 2024) ("We do not overturn our precedents lightly and will not do so absent a showing the prior decision was clearly erroneous." (quoting *Garrison v. New Fashion Pork LLP*, 977 N.W.2d 67, 83 (Iowa 2022))). McClain has not met this high burden. He does not meaningfully engage with the doctrine. *See generally* Appellant's Br. 28–31. The

automobile exception has been a part of Iowa's independent constitutional jurisprudence for four decades. *See Olsen*, 293 N.W.2d at 219–20. It is firmly established, and other than invoking the "van-lifers"[3] subculture, *Storm* addressed the arguments raised here. *See* 898 N.W.2d at 144–45, 153–56. Unlike *Storm*, this record has far less development on the state of electronic warrants in Iowa. *Compare* D0081 at 50:14–51:19 *with* D0031 at 1–3 *with Storm*, 898 N.W.2d at 142–44. This is not enough to satisfy McClain's burden of producing the "highest possible showing" that Iowa's past cases adopting and maintaining the automobile exception were decided erroneously.

To the contrary, those precedents remain correct. As the State addresses within the next subdivision, the needs for and benefits of the automobile exception remain vital today.

[3] As an aside, even if "van lifers" subjectively held a privacy interest in their vehicle, that belief is not reasonable. Almost forty years ago the United States Supreme Court foreclosed this argument in *California v. Carney*, 471 U.S. 386, 393–95 (1985): "Our application of the vehicle exception has never turned on the other uses to which a vehicle might be put. The exception has historically turned on the ready mobility of the vehicle, and on the presence of the vehicle in a setting that objectively indicates that the vehicle is being used for transportation." And of course, this case addresses a run-of-the-mill automobile used as transportation. D0081 at 46:25–47:7.

2. *Electronic warrants have not altered the justifications for and benefits of the automobile exception. This Court should retain it.*

a. *Vehicles and their contents remain inherently mobile and any privacy interest in them must be diminished considering their highly regulated and innate public nature.*

Already discussed, the twin interests of the automobile exception are the exigency innate to vehicles' mobility and the diminished privacy interests afforded them. *See, e.g., Storm*, 898 N.W.2d at 145–47. Both interests remain compelling, even in an era where law enforcement could apply for a warrant roadside.

First, automobiles like Harris's are inherently mobile. At the time of the founding, the consensus was that the Fourth Amendment accepted a distinction "between goods subject to forfeiture when concealed in a dwelling house or similar place, and like goods in the course of transportation and concealed in a movable vessel where they readily could be put out of reach of a search warrant." *See Carroll v. United States*, 267 U.S. 132, 149–53 (1925). Recent decisions of the Iowa Supreme Court and other states continue to recognize "the inherent mobility of automobiles and the latent exigency that mobility creates." *See Rincon*, 970 N.W.2d at 280; *see also Storm*, 898 N.W.2d at 139 n.4 (collecting authorities). Then and now, mobility presents a risk of loss of evidence. It is an exigency

counterbalancing the default warrant preference. *See, e.g.*, *Allensworth*, 748 N.W.2d at 792–94, 797. And this risk remains even if police detain the vehicle's driver and passengers as they did here. *Id. at* 297; *accord*. *Storm*, 898 N.W.2d at 153–54, 155–56.

The reason is straightforward enough. It is all-too-imaginable that the inherently mobile vehicle could become literally mobile. Once alert to the risk of discovery, a person could overcome or bypass an officer to take control of the vehicle and drive it away. Here, the troopers were outnumbered two-to-one on account of Brooks being present as a field training officer. D0081 at 5:23–6:11; 7:24–9:4. Had Brooks not been present and accepting McClain's position *arguendo*, Baumgartner would have been outnumbered four-to-one as he drafted a search warrant application and kept an eye on McClain and the vehicle's other occupants. D0081 at 35:19–25, 37:21–24, 52:13–25. *Olsen's* exigency analysis remains persuasive for any officer presented this task. *See Olsen*, 293 N.W.2d at 218, 220.

The proliferation of electronic communication has only heightened the hazard of these routine roadside officer-to-occupant ratios. It permits those detained occupants to engage in inaudible planning. *See Storm*, 898 N.W.2d at 155–56 (acknowledging technological advances "allow[] for

quicker communication between conspirators"). It likewise heightens the risk "that one or more third parties—who may very well be completely unknown to the officers—might move a vehicle or tamper with the evidence therein while a warrant is being sought." *See Gary*, 91 A.3d at 136–37; *see also Storm*, 898 N.W.2d at 155–56 (quoting *State v. Winfrey*, 24 A.3d 1218, 1226 and 1226 n.8 (Conn. 2011) ("[W]hen officers are forced to delay their search until a warrant is procured, while the vehicle remains accessible to the public and is potentially mobile, the possibility remains that someone—possibly someone other than the defendant—will attempt either to remove the vehicle or to interfere with law enforcement efforts to maintain a secure crime scene.")); *State v. Zwicke*, 767 N.W.2d 869, 873 (N.D. 2009). Technological advances have complicated rather than diminished the automobile's inherent exigency.

The second rationale courts offer for the automobile exception is their inherently public nature. *Cardwell*, 417 U.S. at 591. That reduced expectation of privacy finds historical roots in the recognition that private belongings lose some of their private character when brought into the public sphere, to be transported on public roadways. *Carroll*, 267 U.S. at 150–53; *Storm*, 898 N.W.2d at 146–47. This is consistent with history, which suggests there were "few limits on the police power to stop carriages

and buggies to investigate crimes. . . . [B]ringing property out into the open by transporting it in public was a risky move that exposed the property to significant outside inspection." Kerr, 125 Harv. L. Rev. at 503, 507–08 (footnote omitted).

This diminished privacy interest afforded to vehicles continues into today because practical experience tells every person that vehicles—unlike homes—are not refuges entitled to privacy. *See Gaskins*, 866 N.W.2d at 46 n.22 (Waterman, J., dissenting) ("[T]here is no basis for extending the heightened privacy rights for a home to this case. Gaskins's van is not his castle."); *State v. Harlan*, 301 N.W.2d 717, 720 (Iowa 1981) ("The officer, like any other citizen, had a right to look into the car."). Any subjective claim of an expectation of privacy is not one our society recognizes as objectively reasonable: "a vehicle is merely a tool to travel, within plain view of outside eyes looking inward, and, therefore, it is harder to find an objective expectation of privacy in such places that society is willing to recognize." Lisa Belrose, *Do Automobile Passengers Have a Legitimate Expectation of Privacy?*, 28 Touro L. Rev. 771, 784–85 (2012); *accord. Cardwell*, 417 U.S. at 591.

Taken together, this means the existence of electronic warrants does nothing to diminish what Iowans know and expect—that their vehicles will

be exposed to the open world while in transit, while parked, or while embarking/disembarking. They know officials could seize and impound their vehicle if it becomes disabled and impedes the flow of traffic. *See South Dakota v. Opperman*, 428 U.S. 364, 367–68 (1976). They know the air and smells emanating from their vehicles will be exposed to any nostril nearby. *See United States v. Morales–Zamora*, 914 F.2d 200, 205 (10th Cir.1990) ("[W]hen odor of narcotics escapes from interior of a vehicle, society does not recognize a reasonable privacy interest in the public airspace containing the incriminating odor"). And, as Iowans also well know, technology is not perfect. Any person who has suffered a dropped call or an endlessly blinking cursor know it can often be slow and frustrating.

The existence of electronic warrants has not diminished either automobile exception rationale. Because they remain, rigorous enforcement of the warrant requirement does not result in any constitutional protections.

b. Abandoning the automobile exception results in few gains for Iowa's civil liberties and significant policy concerns.

If the foregoing was not enough, the State offers a few other reasons not to disturb our law. First, abandoning the automobile exception will not result in a guaranteed benefit to Iowans' civil liberties. The state of the law

does not leave citizens without *any* protection; the State will need to show probable cause existed to justify its warrantless search of vehicle. *See Storm*, 898 N.W.2d at 155; *see also State v. Tompkins*, 423 N.W.2d 823, 831 (Wis. 1988) ("The requirement of probable cause for the officer to search an automobile for controlled substances is a strong deterrent to police invasion.").

And as the Iowa Supreme Court acknowledged in *Storm*, when this standard is met, an officer's search—with or without a warrant—results in a wash for Iowans' civil liberties. *See Storm*, 898 N.W.2d at 155. While a warrant does protect a person's limited privacy interest in the vehicle, their (and their passengers') liberty interests are increasingly implicated with the seizure that follows as the officer and the vehicle's occupants await the magistrate's all-but-certain approval:

> Arguably, because of the preference for a magistrate's judgment, only the immobilization of the car should be permitted until a search warrant is obtained; arguably, only the "lesser" intrusion is permissible until the magistrate authorizes the "greater." But which is the "greater" and which the "lesser" intrusion is itself a debatable question and the answer may depend on a variety of circumstances. For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant. Given

> probable cause to search, either course is reasonable under the Fourth Amendment.

Chambers v. Maroney, 399 U.S. 40, 51–52 (1970) (quoted in *Storm*, 898 N.W.2d at 146). Thus, when probable cause develops during a roadside stop, police must choose between two options that implicate privacy interests. "[E]ither course is constitutionally reasonable." *State v. Lloyd*, 312 P.3d 467, 474 (Nev. 2013); *see also State v. Laub*, 2 N.W.3d 821, 835, 837–38 (Iowa 2024) (rejecting constitutional challenges to officer's discretionary investigatory decision); *Chambers*, 399 U.S. at 51. That is because

> While electronic filing may save time, the officer still must take care to prepare the warrant application accurately whether he or she is in a patrol car at the scene of the stop or at a desk at the station house.
>
> At this point, forcing an officer to draft a search warrant application while multitasking on the side of the road may jeopardize the accuracy of the warrant application and would require motorists to be detained for much longer periods. On the civil liberties side of the ledger, we perceive no meaningful net benefit to motorists being subjected to longer seizures.
>
> . . . .
>
> Requiring a warrant for an automobile search thus does little to protect privacy or advance civil liberty.

Storm, 898 N.W.2d at 155; *see also Gaskins*, 866 N.W.2d at 49 (Waterman, J., dissenting) ("These encounters will occur under myriad circumstances,

including a lone officer who stops a van full of people in a remote area in subzero temperatures. . . . So, does the officer keep everyone waiting by the side of the road pending delivery of a warrant? Does the officer instead impound the vehicle and leave the passengers stranded?"). The suppression record shows Baumgartner's search started within ten minutes of the stop and was complete ten minutes later. D0081 at 19:1–23; 49:13–17.

And while abandoning the exception will not advance civil liberty, it would create additional, undesirable results. One relevant consideration is the dangers of protracted stops. Certainly, mere inconvenience is not enough to establish an exception to the warrant requirement. But protracted roadside stops would create an impracticable burden for Iowa law enforcement officers and the public. Extended roadside detainments could stretch the available Iowa law enforcement resources in rural counties thin. *See Iowa State Patrol Looking to Hire More Troopers*, KCCI (Feb. 8, 2022), *available at* https://www.youtube.com/watch?v=aIhm2BjmgP8; *accord Law Enforcement Faces Staffing Shortages Across Iowa*, KCCI (Sept. 22, 2023) *available at* https://www.kcci.com/article/law-enforcement-faces-staffing-shortages-across-iowa-state-patrol/45271218. Even major metropolitan police departments are struggling with staffing. *See Iowa Police Agencies*

Struggle to Lure Applicants, The Gazette (May 8, 2023) *available at* https://www.thegazette.com/crime-courts/iowa-police-agencies-struggle-to-lure-applicants/ (discussing decline in qualified applicants to the Cedar Rapids and Iowa City police departments). Combining fewer available officers *with* the need for multiple officers to assist while one drafts the warrant application *with* the delayed probable cause search that follows logically leads to deferred or diminished responses for other arising calls and emergencies.

And when the roadside encounter duration increases as the officer awaits the magistrate's approval to search, so too does the safety risks to the officer and vehicle's occupants. *See Storm*, 898 N.W.2d at 151 (discussing *State v. Witt*, 126 A.3d 850, 853 (N.J. 2015)). "'News reports reveal the carnage caused by cars and trucks crashing into police officers and motorists positioned on the shoulders of our highways.'" *Id.* This Court, like the court in *Storm* should "decline to impose those risks on Iowa motorists and peace officers." *Id.*

And finally, an unmistakable benefit of the automobile exception is its brightline application and predictability for police and judges alike. *Storm*, 898 N.W.2d at 156. McClain asks this Court to return to an ad hoc automobile exception in which the State must establish an exigency aside

from the automobile itself or suffer suppression. Appellant's Br. 28, 31. The *Storm* court already explained why that is not desirable:

> The automobile exception is easy to apply, unlike its alternative—an amorphous, multifactor exigent-circumstances test. We generally "prefer the clarity of bright-line rules in time-sensitive interactions between citizens and law enforcement." Bright-line rules are "especially beneficial" when officers "have to make . . . quick decisions as to what the law requires where the stakes are high, involving public safety on one side of the ledger and individual rights on the other."
>
> . . . .
>
> Bright-line rules support predictability of result and avoid inconsistent police and judicial determinations.

Id. (citations omitted). So given that the interests for the exception remain, and the implications that would follow from case-by-case determination of exigency, the automobile exception's clear guidance remains preferable.

It is no surprise that most states have retained it. *See Storm*, 898 N.W.2d 148 n.4 (collecting the 45 states that have adhered to the automobile exception). Several have done so under their state constitution in addition to the Fourth Amendment. *See, e.g.*, *State v. Rocha*, 890 N.W.2d 178, 205–08 (Neb. 2017) (quoted in *Storm*, 898 N.W.2d at 149–50). And this remains so, even though the Federal Government and more than half the states have already authorized remote warrant applications.

See Missouri v. McNeely, 569 U.S. 141, 154–55, 154 n.4 (2013); *Storm*, 898 N.W.2d at 153–54. Abandoning the automobile exception is undesirable as a matter of law and policy. And these facts do not make a compelling argument for it, either.

c. The minimal facts developed below do not shed enough light on the nature of electronic warrants in Iowa to undermine this Court's past precedents and abandon the automobile exception.

Finally, the few facts available do not support McClain's request. Because defense counsel below did not raise the issue, this is the extent of the record about electronic warrants' availability in Buchanan County in July 2023:

- Electronic warrants were available to Trooper Baumgartner. D0081 at 50:14–51:4
- Baumgartner had done one electronic search warrant in his career; it was "fairly simple" to fill out. D0081 at 51:7–10; 45:12–21.
- The magistrate responded "with reasonable promptitude." D0081 at 51:11–19.

That is all. And while Brooks believed three cars worked that day, we do not know how many other officers were on duty in Buchanan County or how long it would take for them to arrive and assist. D0081 at 7:2–5; *cf. Storm*,

898 N.W.2d at 142. The record provides few concrete details on the drafting process or how long it and obtaining the magistrate's approval takes. D0081 at 50:14–51:19; *cf. Storm*, 898 N.W.2d at 143–44; *see generally* Iowa Supreme Ct. Supervisory Order, *In the Matter of Establishment of the Electronic Search Warrant Pilot Project, Second Amended Memorandum of Operation* at 1, 6 (9/1/2022) *available at* *https://www.iowacourts.gov/collections/750/files/1614/embedDocument*. Or, as the district court pointed out, what troopers should do when they are outnumbered by the vehicles' passengers:

> This was a dangerous situation. The 4 occupants were waiting outside with 1 trooper while the other trooper searched. The stop occurred on a busy highway. The defendant's conduct was unpredictable—he was anxiously pacing back and forth during the search and ran from the officer upon repeated requests to search the defendant. Increasing the time needed to prepare, file and wait for the search warrant would increase the danger of this traffic stop.

D0031 at 2.

But on the other hand, it contains all the information necessary to apply the automobile exception. D0081 at 36:18–38:2; D0031 at 1–3. This is poor support to abandon the automobile exception's clear guidance in favor of an uncertain ad hoc exigency analysis for automobile searches.

3. Based on either the law, the resulting consequences, the facts, or each taken together, this Court should reject McClain's unpreserved claim.

To sum up, this Court should reject McClain's request for multiple grounds. Putting to one side the jurisdiction and preservation concerns that should preclude review, the text and history of the Iowa Constitution does not support McClain's proposed analysis. The interests that supported the creation of the automobile exception remain as vital in 2024 as they did in 1925 or in 1980 when *Olsen* incorporated it under the Iowa Constitution. Rigorous enforcement of the warrant preference will have undesirable practical consequences and little gains for Iowans' civil liberties. Last and related to the error preservation defects, the minimal record developed does not support the sea change of abandoning the automobile exception for the uncertainty that would follow. Taken independently or altogether, each of these considerations weighs strongly in favor of this Court following its forty-year precedent. It should affirm.

CONCLUSION

This Court should not permit review of this conditional guilty plea because it is not in the interest of justice for McClain to raise and receive this Court's review of unreserved issues. This Court should dismiss the appeal.

Moreover, the merits are not compelling. The district court's application of the automobile exception was correct. The court could credit a law enforcement officer's testimony identifying marijuana's distinct odor based on the witness's training and more than five years of experience. The automobile exception's underpinnings remain vital even in a dawning age of electronic warrants. In sum, it should dismiss the appeal or affirm.

REQUEST FOR NONORAL SUBMISSION

Because the issues raised in this brief are not properly before the Court, oral argument to discuss the contours Iowa Code section 814.6(3) or error preservation would not meaningfully help the Court resolve the appeal. If the Court orders argument, the State requests to be heard.

Respectfully submitted,

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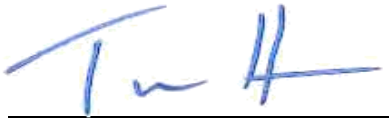

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