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IN THE SUPREME COURT OF IOWA

NO. 20-0710

RICKIE RILEA, individually and on behalf of those similarly situated,

Plaintiff-Appellant

vs.

STATE OF IOWA; IOWA DEPARTMENT OF TRANSPORTATION; DAVID LORENZEN, in his official Capacity as Director of the IDOT Motor Vehicle Enforcement Division; and MARK LOWE, in his Official Capacity as Director of the IDOT Motor Vehicle Division; and PAUL TROMBINO III, in his Official Capacity as Director of IDOT,

Defendants-Appellees.

Appeal from the Iowa District Court for Polk County
The Honorable David Nelmark, Judge

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TABLE OF CONTENTS

TABLE OF CONTENTS..2

TABLE OF AUTHORITIES..4

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW...................8

ROUTING STATEMENT... 13

STATEMENT OF THE CASE 14

ARGUMENT.. 18

I. RILEA CANNOT COLLATERALLY ATTACK A JUDGMENT REQUIRING HIS PAYMENT OF THE FINE, SURCHARGE AND COSTS WHEN HE HAS BEEN ADJUDICATED GUILTY OF THE OFFENSE BY AN IOWA COURT WITH JURISDICTION AND WHEN HE NOT ONLY COMMITTED THE OFFENSE BUT WAS OBSERVED COMMITTING THE OFFENSE BY A DOT MOTOR VEHICLE ENFORCEMENT PEACE OFFICER.............. 18

A. Error preservation, scope of review and standard of review. 18

B. No unjust enrichment claim is viable in respect to fines and related sums paid pursuant to a final and firm judgment entered in the Iowa court system. 19

C. Rilea's conviction remains on the books and it cannot be set aside by collateral attack.. 22

II. THERE WAS NO "UNJUST ENRICHMENT" BECAUSE (1) MR. RILEA NEVER PAID ANYTHING TO DEFENDANTS LORENZEN, LOWE, TROMBINO OR DOT, (2) MCSAP FUNDS WERE NOT PAID AT RILEA'S EXPENSE AND (3) RILEA'S PAYMENT OF A FINE AND RELATED CHARGES TO THE STATE OF IOWA CANNOT AS A MATTER OF LAW BE DEEMED AN "UNJUST" ENRICHMENT UNDER THESE CIRCUMSTANCES.................. 46

A. Alternative ground for affirmance 46

B. Defendants Lorenzen, Lowe, Trombino and DOT received no payment or benefit from Rilea............................. 47

C. MCSAP funds distributed by the federal government to the State of Iowa through DOT did not confer any benefit at Rilea's expense... 48

D. There is nothing "unjust" in the State of Iowa's receipt of the fine, surcharge and court costs from the lawbreaker who committed the offense. 54

III. RILEA'S CLAIM IS BARRED BY PRINCIPLES OF SOVEREIGN IMMUNITY. 59

A. Alternative ground for affirmance. 59

B. Unjust enrichment and sovereign immunity. 60

1. Sovereign immunity and implied-contract claims......... 61

2. The Iowa Tort Claims Act. 66

CONCLUSION... 70

REQUEST FOR ORAL ARGUMENT 72

CERTIFICATE OF COMPLIANCE.. 73

CERTIFICATE OF FILING AND CERTIFICATE OF SERVICE 74

TABLE OF AUTHORITIES

Cases:

Ahrendsen ex rel. Ahrendsen v. Iowa Department of Human Services, 613 N.W.2d 674 (Iowa 2000) 61
Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L. Ed.2d 202 (1986)... 19
Bank of New York Mellon v. Foster, 781 N.W. 2d 101 (Table), 2010 WL 624902 (Iowa App. 2010) 25
Behr v. Meredith Corp., 414 N.W.2d 339 (Iowa 1987) 19
Bell v. Commonwealth, 423 S.W.3d 742 (Ky. 2014) 25
Cubit v. Mahaska County, 677 N.W.2d 777 (Iowa 2004)............................ 19
Daughenbaugh v. State, 805 N.W.2d 591 (Iowa 2011) 24
Dolezal v. City of Cedar Rapids, 326 N.W.2d 355 (Iowa 1982).................. 62
Duck Creek Tire Service v. Goodyear Corners, 796 N.W.2d 886 (Iowa 2011)... 46, 59
Endress v. Iowa Department of Human Services, 944 N.W.2d 71 (Iowa 2020)... 61, 62
Fetters v. Degnan, 250 N.W.2d 25 (Iowa 1977) 26-28, 38
Haring v. Prosise, 462 U.S. 306, 103 S.Ct. 2368, 76 L.Ed.2d 595 (1983).. 39
Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994).. 36
Holdsworth v. State, 862 N.W.2d 414 (Table) (Iowa App. 2015) 2015 WL 405886 .... 43, 44
Hyde v. Buckalew, 393 N.W.2d 800 (Iowa 1986) 68
In re Stratman's Estate, 231 Iowa 480, 1 N.W.2d 636 (1942)..................... 25
Iowa Waste Sys., Inc. v. Buchanan County, 617 N.W.2d 23 (Iowa App. 2000)... 25
Jacobsma v. Iowa District Court, 745 N.W.2d 96 (Table) 2007 WL 4553636 (Iowa App. 2007) 63
Kersten Co. v. Dept. of Social Services, 207 N.W.2d 117 (Iowa 1973)... 64
Kolarik v. Cory Int'l Corp., 721 N.W.2d 159 (Iowa 2006).......................... 19
Kragnes v. City of Des Moines, 810 N.W.2d 492 (Iowa 2012)............. 20, 21
Krieger v. Iowa Department of Human Services, 439 N.W.2d 200 (Iowa 1989).. 61, 64
Kuehl v Eckhart, 608 N.W.2d 475 (Iowa 2000)... 25

Lee v. State, Polk County Clerk of Court, 815 N.W.2d 731
(Iowa 2012).. 64, 65
Matter of Estate of Voss, 553 N.W.2d 878 (Iowa 1996) 68
McFadden v. Dept. of Transp., 877 N.W.2d 119 (Iowa 2016) 68
McGinnis v. Iowa Clinic, 776 N.W.2d 110 (Table),
2009 WL 2424643 67
Merchants Motor Freight, Inc. v. State Highway Comm'n,
239 Iowa 888, 32 N.W.2d 773 (1948)................................... 31, 32, 35
Moore v. Sims, 200 F.3d 1170 (8th Cir. 2000) 35, 36, 38
Rilea v. Iowa Dept. of Transp., 919 N.W.2d 380
(Iowa 2018)........................14, 16, 17, 30, 31, 33-35, 37, 45, 51, 53, 56
Sanford v. Manternach, 601 N.W.2d 360 (Iowa 1999).................... 27, 28, 38
Schmidt v. State, 909 N.W.2d 778 (Iowa 2018) 40, 44
Schott v. Schott, 744 NW2d 85 (Iowa 2008) 27
Severson v. Sueppel, 260 Iowa 1169, 152 N.W.2d 281 (1967).............. 51, 52
Slade v. M.L.E. Investment Co., 566 N.W.2d 503 (Iowa 1997)....... 20, 22, 23
Smith v. Harrison, 325 N.W.2d 92 (Iowa 1982) 19, 20
State v. Aderholdt, 545 N.W.2d 559 (Iowa 1996) 37
State v. Dvorak, 261 N.W.2d 486 (Iowa 1978) 64
State v. Fitz, 265 N.W.2d 896 (Iowa 1978).. 40
State v. Henderson, 926 N.W.2d 561 (Table)
(Iowa App. 2018) 2018 WL 6338605 44
State v. Lloyd, 513 N.W.2d 742 (Iowa 1994).................................. 32, 33, 35
State v. Moore, 609 N.W.2d 502 (Iowa 2000) 35
State v. Pettijohn, 899 N.W.2d 1 (Iowa 2018) 56
State v. Robison, 908 N.W.2d 881 (Table)
(Iowa App. 2017), 2017 WL 4049462 28
State v. Ryan, 351 N.W.2d 186 (Iowa 1984)... 68
State v. Tuemier, 2005 WL 637814 (Ohio App. 2005) 65
State v. Werner, 919 N.W.2d 375 (Iowa 2018) 32-34
State ex rel. Palmer v. Unisys Corp., 637 N.W.2d 142
(Iowa 2001)... 38, 48, 58

State Public Defender v. Iowa District Court for Woodbury County, 731 N.W.2d 680 (Iowa 2007) 63
Stumpf v. Reiss, 502 N.W.2d 620 (Iowa App. 1993)................................... 57
United States v. $30,006.25 in U.S. Currency, 236 F.3d 610 (10th Cir. 2000) 62
United States v. Craig, 694 F.3d 509 (3d Cir. 2012).................................. 62
Weizberg v. City of Des Moines, 923 N.W.2d 200 (Iowa 2018) 21, 22, 55
Welch v. Iowa Dept. of Transp., 801 N.W.2d 590 (Iowa 2011)............ 51, 52
Wenck v. State, 320 N.W.2d 567 (Iowa 1982) 29
Westra v. Iowa Dept. of Transp., 929 N.W.2d 754 (Iowa 2019) 37, 56-58

Statutes and Other Authorities:

42 U.S.C. § 1983 36
Iowa Constitution Article I, § 8 56
Iowa Constitution Article I, § 9 56
Iowa Code ch. 17A 16
Iowa Code § 17A.9(1)(a) 15
Iowa Code § 80.22 57
Iowa Code ch. 321 .... 14, 20
Iowa Code § 321.12 29
Iowa Code § 321.285 .... 20, 21, 35, 65
Iowa Code § 321.380 51
Iowa Code § 321.449(1)(a) (2016) 52
Iowa Code § 321.477 (2016) 34, 51, 53
Iowa Code § 321.477 (2018) 34
Iowa Code § 321.491 29
Iowa Code § 321.492 (2016) 33
Iowa Code § 321J.1(8)(e) 51
Iowa Code § 321J.17(1) (2017) 56
Iowa Code § 602.1215 24
Iowa Code § 602.8106 24
Iowa Code § 602.8107(1)(a)... 24
Iowa Code § 602.8107(2) 24
Iowa Code ch. 669 .... 60, 67-69, 71
Iowa Code § 669.2(3)(a) and (b) 67
Iowa Code § 669.13(1) 66
Iowa Code § 669.14(2) 69
Iowa Code § 669.14(4) 69
Iowa Code § 801.4(11)(h) (2016) 32

Iowa Code § 804.9 31
Iowa Code § 804.9(1) 14, 32, 33
Iowa Code § 805.8(1) 63, 65
Iowa Code § 805.8A 63
Iowa Code § 805.8A(14)(i) 39, 63, 65
Iowa Code § 805.9(1) 41
Iowa Code § 805.12 24
Iowa Code ch. 822 43
Iowa Code § 822.2(2) 29
Iowa Code § 822.3 43
1974 Iowa Acts ch. 1180, preamble 31
1976 Iowa Acts ch. 1245, ch. 2, § 104 31
2017 Iowa Acts ch. 149, §§ 3-5 34
761 IAC 520.1(1) (2020) 53
Iowa Rule of Appellate Procedure 6.903(2)(g)(3) 48
Iowa Rule of Appellate Procedure 6.1101(2)(c) and (d) 13
Iowa Rule of Civil Procedure 1.981(5) 45, 49
Iowa Rule of Criminal Procedure 2.8(2)(b) 41, 42
Iowa Rule of Criminal Procedure 2.23(1) 23
Iowa Rule of Criminal Procedure 2.68 23
Iowa Rule of Criminal Procedure 2.73(1) 23, 24
49 CFR § 350.101(a) (2018) 52
49 CFR § 350.109 (2018) 50
49 CFR § 350.215 53
49 CFR § 350.323 (2018) 49
49 CFR § 392.6 (2018) 52
Op. Att'y Gen., No. 90-12-8, 1990 WL 484921 .... 31, 34-35
Federal Motor Carrier Safety Regulations Plus Edition (October 2018) 49
Restatement (Third) of Restitution and Unjust Enrichment § 1 58
Restatement (Third) of Restitution and Unjust Enrichment § 63 55-56

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I.

CAN RILEA COLLATERALLY ATTACK A JUDGMENT REQUIRING HIS PAYMENT OF THE FINE, SURCHARGE AND COSTS WHEN HE HAS BEEN ADJUDICATED GUILTY OF THE OFFENSE BY AN IOWA COURT WITH JURISDICTION AND WHEN HE NOT ONLY COMMITTED THE OFFENSE BUT WAS OBSERVED COMMITTING THE OFFENSE BY A DOT MOTOR VEHICLE ENFORCEMENT PEACE OFFICER?

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Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L. Ed.2d 202 (1986)
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Behr v. Meredith Corp., 414 N.W.2d 339 (Iowa 1987)
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Daughenbaugh v. State, 805 N.W.2d 591 (Iowa 2011)
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Merchants Motor Freight, Inc. v. State Highway Comm'n,
239 Iowa 888, 32 N.W.2d 773 (1948)
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Rilea v. Iowa Dept. of Transp., 919 N.W.2d 380 (Iowa 2018)
Sanford v. Manternach, 601 N.W.2d 360 (Iowa 1999)
Schmidt v. State, 909 N.W.2d 778 (Iowa 2018)
Schott v. Schott, 744 NW2d 85 (Iowa 2008)
Slade v. M.L.E. Investment Co., 566 N.W.2d 503 (Iowa 1997)
Smith v. Harrison, 325 N.W.2d 92 (Iowa 1982)
State v. Aderholdt, 545 N.W.2d 559 (Iowa 1996)
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2018 WL 6338605
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Weizberg v. City of Des Moines, 923 N.W.2d 200 (Iowa 2018)
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Westra v. Iowa Dept. of Transp., 929 N.W.2d 754 (Iowa 2019)

Statutes and Other Authorities:

42 U.S.C. § 1983
Iowa Code ch. 321
Iowa Code § 321.12
Iowa Code § 321.285
Iowa Code § 321.477 (2016)
Iowa Code § 321.477 (2018)
Iowa Code § 321.491
Iowa Code § 321.492 (2016)
Iowa Code § 321J.1(8)(e)
Iowa Code § 602.1215
Iowa Code § 602.8106
Iowa Code § 602.8107(1)(a)
Iowa Code § 602.8107(2)
Iowa Code § 801.4(11)(h) (2016)
Iowa Code § 804.9

Iowa Code § 804.9(1)
Iowa Code § 805.8A(14)(i)
Iowa Code § 805.9(1)
Iowa Code § 805.12
Iowa Code ch. 822
Iowa Code § 822.2(2)
Iowa Code § 822.3
1974 Iowa Acts ch. 1180, preamble
1976 Iowa Acts ch. 1245, ch. 2, § 104
2017 Iowa Acts ch. 149, §§ 3-5
Iowa Rule of Civil Procedure 1.981(5)
Iowa Rule of Criminal Procedure 2.8(2)(b)
Iowa Rule of Criminal Procedure 2.23(1)
Iowa Rule of Criminal Procedure 2.68
Iowa Rule of Criminal Procedure 2.73(1)
Op. Att'y Gen., No. 90-12-8, 1990 WL 484921

II.

WAS THERE ANY "UNJUST ENRICHMENT" WHEN (1) MR. RILEA NEVER PAID ANYTHING TO DEFENDANTS LORENZEN, LOWE, TROMBINO OR DOT, (2) MCSAP FUNDS WERE NOT PAID AT RILEA'S EXPENSE AND (3) RILEA'S PAYMENT OF A FINE AND RELATED CHARGES TO THE STATE OF IOWA CANNOT AS A MATTER OF LAW BE DEEMED TO BE AN "UNJUST" ENRICHMENT UNDER THESE CIRCUMSTANCES?

Cases:

Duck Creek Tire Service v. Goodyear Corners, 796 N.W.2d 886 (Iowa 2011)
Rilea v. Iowa Dept. of Transp., 919 N.W.2d 380 (Iowa 2018)
Severson v. Sueppel, 260 Iowa 1169, 152 N.W.2d 281 (1967)
State v. Pettijohn, 899 N.W.2d 1 (Iowa 2018)
State ex rel. Palmer v. Unisys Corp., 637 N.W.2d 142 (Iowa 2001)
Stumpf v. Reiss, 502 N.W.2d 620 (Iowa App. 1993)
Weizberg v. City of Des Moines, 923 N.W.2d 200 (Iowa 2018)
Welch v. Iowa Dept. of Transp., 801 N.W.2d 590 (Iowa 2011)

Westra v. Iowa Dept. of Transp., 929 N.W.2d 754 (Iowa 2019)

Statutes and Other Authorities:

Iowa Code § 80.22
Iowa Code § 321.380
Iowa Code § 321.449(1)(a) (2016)
Iowa Code § 321.477 (2016)
Iowa Code § 321J.1(8)(e)
Iowa Code § 321J.17(1) (2017)
Iowa Constitution Article I, § 8
Iowa Constitution Article I, § 9
761 IAC 520.1(1) (2020)
Iowa Rule of Appellate Procedure 6.903(2)(g)(3)
Iowa Rule of Civil Procedure 1.981(5)
49 CFR § 350.101(a) (2018)
49 CFR § 350.109 (2018)
49 CFR § 350.215
49 CFR § 350.323 (2018)
49 CFR § 392.6 (2018)
Federal Motor Carrier Safety Regulations Plus Edition (October 2018)
Restatement (Third) of Restitution and Unjust Enrichment § 1
Restatement (Third) of Restitution and Unjust Enrichment § 63

III.

IS RILEA'S CLAIM BARRED BY PRINCIPLES OF SOVEREIGN IMMUNITY?

Cases:

Ahrendsen ex rel. Ahrendsen v. Iowa Department of Human Services, 613 N.W.2d 674 (Iowa 2000)
Dolezal v. City of Cedar Rapids, 326 N.W.2d 355 (Iowa 1982)
Duck Creek Tire Service v. Goodyear Corners, 796 N.W.2d 886 (Iowa 2011)
Endress v. Iowa Department of Human Services, 944 N.W.2d 71 (Iowa 2020
Hyde v. Buckalew, 393 N.W.2d 800 (Iowa 1986)

Jacobsma v. Iowa District Court, 745 N.W.2d 96 (Table)
2007 WL 4553636 (Iowa App. 2007)
Kersten Co. v. Dept. of Social Services, 207 N.W.2d 117 (Iowa 1973)
Krieger v. Iowa Department of Human Services, 439 N.W.2d 200
(Iowa 1989)
Lee v. State, Polk County Clerk of Court, 815 N.W.2d 731 (Iowa 2012)
Matter of Estate of Voss, 553 N.W.2d 878 (Iowa 1996)
McFadden v. Dept. of Transp., 877 N.W.2d 119 (Iowa 2016)
McGinnis v. Iowa Clinic, 776 N.W.2d 110 (Table), 2009 WL 2424643
State v. Dvorak, 261 N.W.2d 486 (Iowa 1978)
State v. Ryan, 351 N.W.2d 186 (Iowa 1984)
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State Public Defender v. Iowa District Court for Woodbury County,
731 N.W.2d 680 (Iowa 2007)
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United States v. Craig, 694 F.3d 509 (3d Cir. 2012)

Statutes and Other Authorities:

Iowa Code § 321.285
Iowa Code ch. 669
Iowa Code § 669.2(3)(a) and (b)
Iowa Code § 669.13(1)
Iowa Code § 669.14(2)
Iowa Code § 669.14(4)
Iowa Code § 805.8(1)
Iowa Code § 805.8A
Iowa Code § 805.8A(14)(i)

ROUTING STATEMENT

This case should be retained for determination by the Iowa Supreme Court in accordance with Iowa R. App. P. 6.1101(2)(c) and (d). Though not yet certified as a class action, plaintiff Rilea's claim includes a request to ultimately certify the matter for class-action relief in respect to thousands of citations allegedly issued. *See* second amended petition filed November 21, 2016, paragraphs 1-3; Appendix (App.). pp. 6-7.

Consequently, this action poses a potentially very large charge upon State of Iowa resources for the return of fines, costs and surcharges to those who, without dispute, committed the offenses with which they were charged. Given this possibly very large claim against the public treasury, the matter presented is of sufficient public importance it should be retained for review by the Iowa Supreme Court.

Additionally, the question of whether the doctrine of "unjust enrichment" can be utilized to seek the return of fines, court costs and surcharges from those who committed the offenses, and who were adjudicated guilty by courts with jurisdiction pursuant to valid statutory enactments, is likewise of adequate public importance for this matter to be retained by the Supreme Court. Rilea would have the State remit fines, court costs and surcharge monies to those (1) who without doubt were observed

committing the offenses with which they were charged, (2) were adjudicated guilty of those offenses in the Iowa courts and (3) are still subject to those adjudications of guilt, *i.e.*, the adjudications remain intact and have never been set aside or otherwise vacated. This is an issue of first impression. Also, there is the question whether sovereign immunity has been waived to permit the claim Rilea is making.

The related question arising from judicial review of agency declaratory orders concerning Iowa Department of Transportation (DOT) Motor Vehicle Enforcement (MVE) officers, and the scope of their statutory authority under both Iowa Code chapter 321 and citizen's arrest authority pursuant to Iowa Code section 804.9(1), was retained and decided by the Iowa Supreme Court in *Rilea v. Iowa Dept. of Transp.*, 919 N.W.2d 380 (Iowa 2018) (*Rilea I*). Thus, it makes sense for the Supreme Court to retain this appeal as well.

STATEMENT OF THE CASE

Nature of the case.

This appeal concerns whether the district court, Judge Nelmark, properly entered summary judgment in favor of the defendants. Judge Nelmark concluded the unjust enrichment claim asserted by Rilea was invalid because "the fine was lawfully paid to the State of Iowa and there is

no unjust enrichment or illegal exaction." Ruling, April 9, 2020, p. 7; App. p. 257.

Course of proceedings and disposition of case in district court.

This case was commenced by the filing of a petition on November 10, 2016. The named plaintiffs to the initial petition were Timothy Riley and Rebecca Pitts. However, as indicated in Rilea's brief, both those plaintiffs chose not to contest the defendants' motion for summary judgment. Summary judgment was granted against them, and they are not parties to this appeal. Ruling, April 9, 2020, p. 2; App. p. 252.

Plaintiff Rilea first appeared in the case when a second amended petition was filed on November 21, 2016. Second amended petition; App. pp. 6-31. This pleading sought declaratory and injunctive relief (both temporary and permanent), together with a money damages claim alleging "illegal exaction/ unjust enrichment/ restitution" (hereafter for simplicity referred to as "unjust enrichment"). The monetary claim, Count III, sought relief "On Behalf of Plaintiff Rilea and Putative Class." App. p. 28.

By order entered March 20, 2017, the district court, through Judge Ovrom, concluded plaintiffs were obliged to first seek declaratory relief from DOT pursuant to Iowa Code section 17A.9(1)(a) concerning the disputed questions of DOT MVE officer enforcement authority. The district

court dismissed the claims for declaratory and permanent injunctive relief from this action but ordered the claim for unjust enrichment stayed.[1] *See* Judge Ovrom ruling, pp. 4-11; App. pp. 90-97.

The unjust enrichment claim, therefore, was the only claim remaining in this action following Judge Ovrom's dismissal of the claims seeking declaratory and injunctive relief. Thereafter, Rilea's claim for declaratory relief concerning DOT MVE officer enforcement authority proceeded in a separate declaratory relief action brought pursuant to Iowa Code chapter 17A which, following the judicial review procedures made available in chapter 17A, culminated in the decision by the Iowa Supreme Court in *Rilea I*. *See* 919 N.W.2d at 384-385 (outlining procedural background).

The stay in this action was lifted by order of Judge Beattie on April 30, 2019. App. pp. 114-119. On December 31, 2019, the defendants filed their motion for summary judgment. Motion; App. pp. 120-182. On April 9, 2020, Judge Nelmark granted summary judgment in the defendants' favor. Ruling; App. pp. 251-259. Judge Nelmark also entered an order on April 10, 2020, enlarging and amending his ruling to make clear his grant of summary judgment extended in favor of defendant "Mark Lowe, in his

[1]During the hearing before Judge Ovrom, plaintiffs withdrew their claim for temporary injunctive relief from this action.

Official Capacity as Director of the IDOT Motor Vehicle Division." Order on Mark Lowe's motion to amend and enlarge; App. pp. 260-262. Plaintiff Rilea filed a notice of appeal on May 5, 2020. Notice of appeal; App. pp. 263-265.

Statement of facts.

Plaintiff Rilea was speeding upon Interstate 35 in a highway work zone in Warren County on September 12, 2016. He was stopped for the offense by a DOT MVE officer. *See* second amended petition, paragraphs 78-81; *see also* affidavit of Rickie Rilea (plaintiffs' exhibit 2); Uniform citation and complaint and guilty adjudication (defendants' exhibit C); App. pp. 22, 178, 269-271. *See also Rilea I*, 919 N.W.2d at 384 (setting forth factual summary pertaining to the stop of Rilea's noncommercial motor vehicle).

Mr. Rilea had been "observed" by the DOT MVE officer committing the speeding violation. There is no doubt about this fact. Plaintiffs' second amended petition made clear any traffic stops executed by DOT MVE officers were only executed when a motorist had been "observed violating" Iowa law by the officer. Second amended petition, paragraph 57; App. p. 19. In Mr. Rilea's case, he was speeding 66 miles per hour in a 55 mile-per-hour zone. Mr. Rilea, following his plea of guilty, was adjudicated guilty of

the speeding infraction by the Warren County District Court. He paid the fine, court costs and surcharge as provided by law. Defendants' exhibit C; affidavit of Rickie Rilea (plaintiffs' exhibit 2); second amended petition, paragraph 81 ("On September 16, 2016, Plaintiff Rilea remitted payment for the citation."); App. pp. 22, 178-181, 269-271.

ARGUMENT

I.

RILEA CANNOT COLLATERALLY ATTACK A JUDGMENT REQUIRING HIS PAYMENT OF THE FINE, SURCHARGE AND COSTS WHEN HE HAS BEEN ADJUDICATED GUILTY OF THE OFFENSE BY AN IOWA COURT WITH JURISDICTION AND WHEN HE NOT ONLY COMMITTED THE OFFENSE BUT WAS OBSERVED COMMITTING THE OFFENSE BY A DOT MOTOR VEHICLE ENFORCEMENT PEACE OFFICER.

A. Error preservation, scope of review and standard of review.

Rilea presents only one issue for review. He has framed that issue as presenting the question of whether he is "barred from seeking an unjust enrichment claim under the collateral attack doctrine." *See* Rilea's Statement of Issue presented for review. The defendants agree Rilea has preserved error on this issue.

This matter comes up for appeal from a ruling granting the defendants' motion for summary judgment. A grant of summary judgment

is reviewed for correction of errors of law. *Kolarik v. Cory Int'l Corp.*, 721 N.W.2d 159, 162 (Iowa 2006). The record is reviewed to determine whether a material fact is in dispute. *See*, *e.g.*, *Cubit v. Mahaska County*, 677 N.W.2d 777, 779 (Iowa 2004). The evidence in assessing the summary judgment motion must be measured against the "governing law." *See Behr v. Meredith Corp.*, 414 N.W.2d 339, 341 (Iowa 1987), quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L. Ed.2d 202 (1986) (U.S. Supreme Court's discussion of federal summary judgment motion standard adopted in Iowa by *Behr*).

B. No unjust enrichment claim is viable in respect to fines and related sums paid pursuant to a final and firm judgment entered in the Iowa court system.

Rilea claims entitlement to a refund of the fine, costs and surcharge he paid. As a basic proposition of restitution, Mr. Rilea is entitled to a return of money he paid if, in fact, what was paid belonged to Rilea. Unjust enrichment, after all, is part of the doctrine of restitution. *Smith v. Harrison*, 325 N.W.2d 92, 94 (Iowa 1982).

The money Rilea paid, however, did not belong to Rilea. It was money owed the State of Iowa as court debt because Rilea was adjudicated guilty in Warren County District Court. Because the payment Rilea made was a product of a court's adjudication, it did not result in an unjust

enrichment. In *Slade v. M.L.E. Investment Co.*, 566 N.W.2d 503, 506 (Iowa 1997) (emphasis added), it was said:

> Plaintiff Slade contends M.L.E. was unjustly enriched by obtaining title to the Clark Street property. However, that argument ignores the fact that when M.L.E. executed on the foreclosure judgment, purchased the property at the sheriff's sale, obtained a sheriff's deed, and later sold the property to a third party, *it was only doing what it was entitled to do based on a final and firm judgment.*

See also Smith v. Harrison, 325 N.W.2d at 94 (emphasis added):

> Any benefits received by Harrison were received pursuant to the lease. *It was not unjust for him to receive them unless the lease should be set aside.* Thus, a ground for invalidating the lease must be established before a basis for restitution exists.

Furthermore, this is not a situation where the liability created was based upon a statute, ordinance or regulatory scheme which was void. Rilea was adjudged guilty of Iowa Code section 321.285, Iowa's statute pertaining to allowable vehicle speeds. There is no assertion section 321.285 was beyond the authority of the State of Iowa to adopt, or that any other rule of the road for which a criminal penalty is provided in Iowa Code chapter 321 represents an unauthorized enactment.

Therefore, Rilea's reliance upon *Kragnes v. City of Des Moines*, 810 N.W.2d 492 (Iowa 2012), is of no utility. *Kragnes* involved a utility "franchise fee" the municipality was not authorized to collect. That is what made the payment an illegal exaction. There is no controlling authority

Rilea can cite rendering Iowa Code section 321.285 invalid or unconstitutional. Rilea's reference to *Kragnes* is the comparison of an apple to an orange.

It was not "unjust" for Rilea to have paid the fine, costs and surcharge pursuant to the liability he acceded to when he entered his plea of guilty to the speeding offense. His payment was made pursuant to an adjudication entered by an Iowa court. And it is undisputed Mr. Rilea committed the offense. His brief's conclusion contains an admission Rilea "exceeded the speed limit."

Rilea has sustained no recoverable damage. In the context of a traffic-camera case, Justice Mansfield (concurring in part and dissenting in part) made the following observation:

> Yet, the City may be able to demonstrate that someone like Dagel who paid the citation after an unauthorized administrative process nonetheless committed the traffic violation and therefore suffered no recoverable damages. This may qualify as a defense to a damages claim.

Weizberg v. City of Des Moines, 923 N.W.2d 200, 225 (Iowa 2018).

This case presents an even stronger scenario for the application of Justice Mansfield's rationale. Here a criminal violation indisputably occurred, and an adjudication of the commission of the crime was made by a court. The traffic-camera case, on the other hand, merely involved civil

penalties and, unless the matter was disputed with a municipal infraction citation requested, the controversy never found its way into court. *See Weizberg*, 923 N.W.2d at 204.

This case, therefore, offers compelling ground for denial of any claim charging unjust enrichment. Payment of the criminal fine, surcharge and court costs was the product of the court system and the fact there had been an adjudication of guilt entered by a court against Rilea. In the words of the *Slade* decision, *see* 566 N.W.2d at 506, the State in receiving payment of the fine, cost and surcharge was "only doing what it was entitled to do based on a final and firm judgment." By definition, there was nothing "unjust"; Rilea sustained no recoverable damages.

C. Rilea's conviction remains on the books and it cannot be set aside by collateral attack.

Judge Nelmark logically concluded: "Keeping the funds paid would only become unlawful if the underlying conviction were overturned." Ruling, p. 6; App. p. 256. But as Judge Nelmark correctly noted: "Mr. Rilea's conviction has not been overturned." *Id*. Nor does Rilea claim his conviction for speeding was ever set aside. His conviction for the speeding offense in Warren County remains on the books.

So, with a final adjudication compelling payment of the fine, costs and surcharge in the amounts the law provides for, how in the world has any

"unjust enrichment" taken place? Obviously, it has not. Rilea owed the money to the State; not vice versa. The State has merely received what it was entitled to receive in accordance with a final judgment entered by an Iowa court. *Slade*, 566 N.W.2d at 506.

A guilty plea to a criminal charge, including a speeding offense, results in *a judgment*. *See*, *e.g.*, Iowa R. Crim. P. 2.68 (emphasis added):

> When the defendant pleads guilty or is convicted, the magistrate *may render judgment* thereon as the case may require ….
>
> If the judgment and costs are not fully and immediately satisfied, the magistrate shall indicate on the judgment the portion unsatisfied and shall promptly certify a copy of the judgment to the clerk of the district court. The clerk shall index and file the judgment, *whereupon it is a judgment of the district court*.

See also Iowa R. Crim. P. 2.23(1):

> Upon a verdict of not guilty for the defendant, or special verdict upon which a judgment of acquittal must be given, the court must render *judgment* of acquittal immediately. Upon a plea of guilty, verdict of guilty, or a special verdict upon which a *judgment of conviction may be rendered*, the court must fix a date for pronouncing *judgment*, which must be within a reasonable time but not less than 15 days after the plea is entered or the verdict is rendered, unless defendant consents to a shorter time.

(Emphasis added).

In addition, Iowa R. Crim. P. 2.73(1) provides an appeal from simple misdemeanor convictions by the defendant "upon a judgment of conviction."

The rule notes a party takes an appeal by oral notice to the magistrate at the time "judgment is rendered," or by filing with the clerk a written notice of appeal within ten days "after judgment is rendered." *See also Daughenbaugh v. State*, 805 N.W.2d 591, 599 (Iowa 2011) (the technical legal sense of the word "conviction" involves adjudication of guilt and the entry of a *judgment*). Therefore, the fine, surcharge and costs Rilea paid were in accordance with a judgment.

Rilea paid the fine and related amounts through Iowa's court system. These sums are paid as court debt. *See also* affidavit of Mark Lowe (defendants' exhibit D); App. p. 182. "Court debt" is defined to include fines, penalties, court costs and surcharges. *See* Iowa Code § 602.8107(1)(a). Court debt "shall be owed and payable to the clerk of the district court." Iowa Code § 602.8107(2). *See also* Iowa Code §§ 805.12 (fines, fees and costs distributed in accordance with section 602.8106) and 602.8106 (providing for clerk of court's collection of fees with remittance of fines to either a city, county treasurer or state court administrator as appropriate). The clerks of court are officers of the State of Iowa's judicial system appointed by the district judges of each judicial election district. *See* Iowa Code § 602.1215.

By contending the fine, costs and surcharge should be returned to him because it constitutes an "unjust enrichment," Rilea is necessarily contending the judgment compelling payment of those sums to the State should be ignored or treated as if it has been set aside. Unjust enrichment is an equitable concept. *See Iowa Waste Sys., Inc. v. Buchanan County*, 617 N.W.2d 23, 30 (Iowa App. 2000). But equity must follow the law. *Bank of New York Mellon v. Foster*, 781 N.W. 2d 101 (Table), 2010 WL 624902 *1 (Iowa App. 2010); *see also Kuehl v Eckhart*, 608 N.W.2d 475, 477 (Iowa 2000). Or as the Kentucky Supreme Court aptly put it: "Law trumps equity." *Bell v. Commonwealth*, 423 S.W.3d 742, 748 (Ky. 2014).

Rilea cannot make an unjust enrichment claim for himself, let alone some overblown class-action suit on behalf of those "similarly situated" when there are adjudications of guilt on the books compelling the fine-related payments to the State. The law does not countenance the production of a fantasy whereby proceedings are conducted as if prior judgment entries have been magically scrubbed from the court records when they have not.

The Iowa Supreme Court has said in relation to the concept of unjust enrichment: "[I]t is essential merely to prove that a defendant has received money which in equity and good conscience *belongs to plaintiff*." *In re Stratman's Estate*, 231 Iowa 480, 488, 1 N.W.2d 636, 642 (1942) (emphasis

added). That axiom cannot be satisfied here. First, the fine, surcharge and costs *do not belong* to Rilea. They belong to the State of Iowa because Rilea was adjudicated guilty by a court with jurisdiction. He has no recoverable damages as noted earlier. Second, Rilea has no right in "equity" to have the sums returned to him. The fines, surcharges and costs were not tendered in a proceeding in equity. They were tendered because of Rilea's conviction in a court of law for an offense he admits he committed.

Rilea, in essence, is waging an improper collateral attack on a final judgment. The law does not permit this. Final convictions imposing fines, surcharges and costs cannot be attacked collaterally. In *Fetters v. Degnan*, 250 N.W.2d 25, 27 (Iowa 1977), an Iowa district court rescinded the suspension of an individual's Iowa driving privileges which DOT had imposed because of the licensee's drunk driving conviction in Wisconsin. The Iowa court concluded the Wisconsin court got it wrong. Based upon that determination, the Iowa court absolved the individual of the crime and concluded what occurred in Wisconsin "was not a final conviction under Iowa law." *Id.*

The Iowa Supreme Court in *Fetters* reversed the trial court holding, in the absence of a showing a court is without jurisdiction, a court's adjudication cannot be attacked in a collateral proceeding. It found the Iowa

court's collateral attack on the Wisconsin judgment improper, and even illegal:

> It is equally clear that well established principles prohibit such an attack except upon jurisdictional grounds. *See Peterson v. Eitzen,* 173 N.W.2d 848, 850 (Iowa 1970); *Davis v. Rudolph,* 242 Iowa 589, 595-598, 45 N.W.2d 886, 889-891; *Hetherington v. Roe,* 239 Iowa 1354, 35 N.W.2d 14; *McKee v. McKee,* 239 Iowa 1093, 1095-1096, 32 N.W.2d 379, 380-381. No jurisdictional defect in the Wisconsin proceedings was brought to defendant's attention. Consequently, defendant's decree which enabled Noggles to successfully collaterally attack the Wisconsin conviction was erroneous as a matter of law and "illegal" within the meaning of rule 306, R.C.P.

250 N.W.2d at 30-31.

No jurisdictional defect is claimed by Rilea on the part of the court that adjudicated him guilty of speeding. Nor is it sufficient to invoke notions of "fireside equity" suggesting the resulting judgment was wrong or unfair. *See*, *e.g.*, *Schott v. Schott*, 744 NW2d 85, 88 (Iowa 2008) ("We have repeatedly said a final judgment is conclusive on collateral attack, even if the judgment was erroneous, unless the court that entered the judgment lacked jurisdiction over the person or the subject matter."). Mere error in a judgment is not reviewable in a collateral proceeding. *See Sanford v. Manternach*, 601 N.W.2d 360, 364 (Iowa 1999):

> Our prior case law is clear that a judgment is not subject to collateral attack except on jurisdictional grounds. *See Fetters v. Degnan*, 250 N.W.2d 25, 30 (Iowa 1977). The defendants here do not claim that the district court in the postconviction relief

> actions lacked subject matter jurisdiction or personal jurisdiction. They simply assert that the prior judgment was erroneous because Sanford's claims were moot. But mere error in a judgment is not reviewable in a collateral proceeding. *See Marshfield Homes, Inc. v. Eichmeier*, 176 N.W.2d 850, 851 (Iowa 1970); *see also* 46 Am. Jur.2d *Judgments* § 498 at 760 (1994) (stating an error in the judgment does not deprive the judgment of finality or conclusiveness).

The Iowa Court of Appeals, in reliance upon *Sanford*, has noted "even if the prior proceedings were completed in error," they may not be attacked collaterally. *State v. Robison*, 908 N.W.2d 881 (Table) (Iowa App. 2017), 2017 WL 4049462 *1.

Rilea's payment of the fine, surcharge and costs, pursuant to a "guilty as charged" adjudication entered by an Iowa court, is not something to be deemed of no consequence. His conviction cannot through the medium of this action be declared wrongly entered, and thus oblige the State of Iowa to make restitution to Rilea, let alone a return of fines, surcharges and costs to Rilea's envisioned class of thousands "similarly situated." Rilea's prior judgment of guilty in the Iowa district court is final. It cannot be collaterally attacked. The rationale articulated in cases like *Fetters* and *Sanford* precludes what Rilea is attempting to do. The sums paid by Rilea belong to the State of Iowa *as a matter of law* given the binding nature of Rilea's adjudication.

Rilea has even claimed entitlement to have his DOT driving record expunged of the conviction for speeding. *See* Count III second amended petition, subparagraph b at p. 24; App. p. 29. This, frankly, is preposterous. There is no legal authority to direct DOT to expunge Rilea's conviction. Rilea's conviction stands; it is final. In fact, Rilea's conviction was required to be reported to DOT by the court and its clerk. *See* Iowa Code § 321.491 (convictions in court to be reported to DOT). DOT, in turn, is required to maintain its records as provided by law. *See*, *e.g.*, Iowa Code § 321.12.

Rilea, on page 13 of his proof brief, admits: "Generally, a conviction by a court of competent jurisdiction is not subject to collateral attack except by using the procedures for postconviction relief (PCR) outlined in Iowa Code Chapter 822." Precisely. But Rilea never pursued postconviction relief. Under Iowa Code section 822.2(2), except as otherwise provided, the postconviction process "comprehends and takes the place of all other common law, statutory, or other remedies formerly available for challenging the validity of the conviction or sentence." In fact, "[i]t shall be used *exclusively* in place of them." *Id*. (emphasis added). The postconviction relief process is available even for simple misdemeanor convictions. *See Wenck v. State*, 320 N.W.2d 567 (Iowa 1982).

Rilea accuses the defendants of framing this case as an improper postconviction relief action. But postconviction relief is essentially what Rilea is attempting to obtain in this lawsuit. Rilea, on page 13 of his proof brief, concedes he requested the vacation of his conviction for speeding. The request is smack dab in his prayer for relief in the second amended petition under Count III at page 24, subparagraph b. App. p. 29. The district court correctly noted regarding Rilea's speeding conviction:

> Mr. Rilea did not file a Motion in Arrest of Judgment or Notice of Appeal. Indeed, the Court is not aware of any legal actions initiated by Mr. Rilea prior to the filing of the Second Amended Petition in this lawsuit on November 21, 2016. By this time, any motions with respect to the judgment in his criminal case would have been untimely. The time to file for post-conviction relief has also expired. Iowa Code § 822.3 (establishing a three-year period for filing an application for post-conviction relief). *Schmidt v. State*, 909 N.W.2d 778 (Iowa 2018) does not help Mr. Rilea because he has not asserted a claim of "actual innocence." In addition to pleading guilty in his criminal case, he has also admitted in these proceedings that he committed the traffic offense with which he was charged.

Ruling, p. 7 (footnotes omitted); App. p. 257.

Rilea, nonetheless, persists in essentially rearguing matter related to the issue already resolved in *Rilea I*. And often he provides nothing more than inflamed rhetoric in an apparent hope it will carry the day for him and supplant his need to furnish this Court with established legal precedent for the relief he seeks. In his statement of facts, for instance, Rilea asserts DOT

"knew it did not have the authority to issue general traffic citations." However, this is not supported by the record. DOT, courtesy of a 1990 Iowa Attorney General's opinion, was advised its officers "in the performance of their regular duties" could make citizens' arrests under Iowa Code section 804.9. *See* Op. Att'y Gen., No. 90-12-8, 1990 WL 484921 *3. This was even noted by the Supreme Court in its decision in *Rilea I*. *See* 919 N.W.2d at 392.

The Court in *Rilea I* differed with the attorney general's opinion, but that does not diminish the fact DOT had received advice from its counsel indicating its officers had the citizen's arrest power when they observed a public offense committed in their presence. In addition, *Merchants Motor Freight, Inc. v. State Highway Comm'n*, 239 Iowa 888, 32 N.W.2d 773 (1948), had been decided many decades earlier at a time before the legislature's creation of DOT in the 1970's, and more significantly before the legislature conferred peace office status upon DOT's officers. *See* 1974 Iowa Acts ch. 1180, preamble (establishing an Iowa Department of Transportation); 1976 Iowa Acts ch. 1245, ch. 2, § 104 (first conferring peace officer status on DOT officers as part of the 1976 adoption of the

modern era's Criminal Code)[2]; *see also* Iowa Code § 801.4(11)(h) (2016) (conferring peace officer status upon DOT MVE officers at the time of Rilea's stop). At the time of *Merchants Motor*, the highway commission officers were not peace officers. Therefore, the *Merchants Motor* Court concluded they could not lawfully issue citations (summonses) to the Minnesota firm and its employees. 239 Iowa at 893, 32 N.W.2d at 776.

Significantly, in a later decision interpreting citizen arrest authority vis-à-vis an on-duty peace officer, *State v. Lloyd*, 513 N.W.2d 742, 745 (Iowa 1994), the citizen arrest power in Iowa Code section 804.9(1) was relied upon in upholding the stop of Lloyd who had crossed over from South Dakota into Sioux City, Iowa. The stop was made in Iowa by a South Dakota peace officer who issued Lloyd citations under South Dakota law for operating a motor vehicle without activated taillights and driving with an expired license. The South Dakota officer detained Lloyd in Iowa as well because Lloyd appeared intoxicated, and Iowa peace officers were later

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[2]The 1976 amendment with its conferral of peace officer status upon DOT's officers presented a very colorable argument the holding in *Merchants Motor* had been superseded by statute. Though it was ultimately rejected on appeal, the State, in fact, raised this point in *State v. Werner*, 919 N.W.2d 375, 378 (Iowa 2018).

summoned to the scene with Lloyd being charged for operating while intoxicated. 513 N.W.2d at 742-743.

Permitting the South Dakota officer to make a citizen's arrest in Iowa based upon his observation of offenses committed in his presence, and while the officer was otherwise engaged in his regular duties, could certainly lend itself to the notion an Iowa peace officer, including a DOT MVE officer, should have the same authority. In *Lloyd*, the Court had also held the officer did not lose the "indicia of his office" simply because the officer was relying upon citizen's arrest status. 513 N.W.2d at 745. The Supreme Court in *Rilea I* acknowledged: "To some extent, *Merchants Motor* and *Lloyd* may appear to be at cross-currents …." 919 N.W.2d at 390.

There was as well a good faith split of opinion throughout the Iowa district courts regarding DOT MVE officer enforcement authority by the time of *Rilea I*. For instance, in *State v. Werner*, the district court had held (1) a DOT MVE officer's status as a peace officer authorized him to issue "a summons or memorandum of traffic violation" pursuant to Iowa Code section 321.492 (2016) and (2) even if the officer lacked official authority to stop Werner's vehicle, the officer's conduct qualified as a valid citizen's arrest under Iowa Code section 804.9(1). 919 N.W.2d at 377. S*ee also* defendants' exhibit F (Judge Grady's ruling); App. pp. 233-236.

The Supreme Court admittedly reversed the district court in *Werner*, but the point to take away from all this is a bona fide split existed among Iowa trial courts concerning the enforcement authority DOT MVE officers possessed in relation to matters unrelated "to the operating authority, registration, size, weight, and load of motor vehicles." *See* Iowa Code § 321.477 (2016).[3] Judge Nelmark, in fact, observed:

> At the time Mr. Rilea received and paid his citation, there was a split in District Court opinions as to whether MVE officers had the legal authority to issue such citations.

Ruling, p. 2; App. p. 252.

Even Rilea's exhibits, largely consisting of DOT-created documents, reveal DOT authorities believed DOT MVE officers were endowed with the citizen's arrest authority to act upon public offenses committed in the officer's presence. *See*, *e.g.*, Exhibits 6, 9, 10, 11, 15, 16, 17 and 20; App. pp. 276-281, 289-297, 302-311, 316-319. This was consistent with the 1990

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[3]Iowa Code section 321.477 (2016) authorized DOT to designate certain employees as peace officers to make arrests for violations of the motor vehicle laws "relating to the operating authority, registration, size, weight, and load of motor vehicles …." This version of the statute was in effect when Rilea received his speeding citation. Section 321.477 was later amended effective May 11, 2017. *See* 2017 Iowa Acts ch. 149, §§ 3-5. After the 2017 amendment, *see* Iowa Code § 321.477 (2018), DOT MVE officers, subject to certain restrictions, were authorized to "enforce all laws of the state …." *See also Rilea I*, 919 N.W.2d at 386-387.

Iowa Attorney General's opinion and appeared logically consistent with case authority such as *State v. Lloyd*.

Accordingly, the notion, repeatedly advanced in Rilea's brief, that DOT's officers knowingly engaged in issuing illegal citations should be regarded for the hyperbole it is. The idea DOT officials went about their official business with the malicious intent to unleash officers throughout Iowa to knowingly issue illegal citations is a calumny without support in the record evidence. The documents from DOT show the agency's primary concern was public safety. And here, as well, the Iowa Supreme Court had issued an opinion over a half century after *Merchants Motor* suggesting peace officers were imbued with a separate public safety function authorizing enforcement of Iowa Code section 321.285. *See State v. Moore*, 609 N.W.2d 502, 504 (Iowa 2000) (en banc); *but see Rilea I*, 919 N.W.2d at 388-389.

Rilea does not advance his cause by attempting to cast DOT in the role of a lawless rogue preying upon the citizenry with officers knowingly issuing illegal tickets. That's a dog that won't hunt. Nor does Rilea strike pay dirt by contending he is similarly situated to "a defendant who brings a claim for excessive force after he is convicted." *See* Rilea's proof brief at p. 15. Rilea cites to the per curiam opinion in *Moore v. Sims*, 200 F.3d 1170,

1171-72 (8th Cir. 2000), as his authority. But *Moore* provides not a scintilla of support for what Rilea seeks to do through this action.

Moore allowed a claim of unlawful seizure to proceed provided it did not "necessarily imply the invalidity of his drug-possession conviction." 200 F.3d at 1172. This conclusion was an outgrowth from the rationale espoused by the United States Supreme Court in *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994), a case also cited by Rilea. In *Heck*, the Court held, generally in the absence of the underlying conviction or sentence being reversed or expunged, an action under 42 U.S.C. section 1983 alleging damages for constitutional deprivations should be dismissed if a successful judgment would "necessarily imply the invalidity of [a plaintiff's] conviction or sentence." *Heck*, however, noted some 1983 actions should be allowed to proceed because even if a judgment was successfully obtained, it would not demonstrate "the invalidity of any outstanding criminal judgment." *Heck*, 512 U.S. at 486-87, 114 S. Ct. at 2372.

First, there is no constitutional deprivation at stake in Rilea's case whatsoever. He admits he committed the offense. His second amended petition makes clear he was only stopped when a DOT MVE officer "observed" him committing the violation of law. Second amended petition,

paragraph 57; App. p. 19. Because Rilea, as well as any putative class plaintiffs, committed violations of law which were "observed" in the very presence of the DOT MVE officers, the vehicle stops and resulting citations were based upon reasonable suspicion and probable cause. Observation of a violation of law *always* supplies probable cause to support a vehicle stop. *See State v. Aderholdt*, 545 N.W.2d 559, 563 (Iowa 1996) (finding a violation of a traffic offense, however minor, furnishes probable cause to stop a vehicle).

Most notably, the Iowa Supreme Court recently held, when reasonable suspicion and probable cause exist, there is no constitutional violation committed in stopping a vehicle *even if a DOT officer acted without statutory enforcement authority*:

> We are not persuaded that a stop by a DOT enforcement officer in excess of his statutory enforcement authority, but based upon reasonable suspicion and probable cause, amounts to a constitutional violation.

Westra v. Iowa Dept. of Transp., 929 N.W.2d 754, 765 (Iowa 2019). *Rilea I* was cited and discussed in the *Westra* decision; thus, the Court in issuing its decision in *Westra* was well aware of the previous controversy concerning the scope of the DOT MVE officer enforcement authority. *See* 929 N.W.2d at 757-758.

Second, Rilea's situation is not at all like that faced in *Moore*. The successful pursuit of an unlawful-seizure claim in a section-1983 action might not imply the invalidity of the drug possession conviction. However, here Rilea seeks the return of fine, costs and surcharge money he paid *because of his conviction*. That's all he ever paid to the State, and he certainly cannot claim "unjust enrichment" in relation to anything he did not pay. *See State ex rel. Palmer v. Unisys Corp.,* 637 N.W.2d 142, 155 (Iowa 2001) (a plaintiff claiming unjust enrichment must have incurred an expense).[4]

There is no way to lawfully return the fine, costs and surcharge to Rilea so long as his conviction remains on the books. To order the return of such amounts would not simply "imply" the invalidity of Rilea's underlying conviction; it would be tantamount to an express finding the conviction was invalid. It would mean Rilea should not have paid what he did because he should not have been convicted of the offense giving rise to the reason for his payment in the first place. This sort of bald, collateral attack upon a prior judgment is rejected by cases like *Fetters* and *Sanford*.

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[4]This is obviously why Timothy Riley did not resist the defendants' motion for summary judgment. Riley's criminal charge was dismissed on May 1, 2017. This was after he had filed the petition in this case. Riley, therefore, paid nothing. *See* defendants' exhibit A; App. pp. 158-161. There is no unjust enrichment when no expense is incurred.

Rilea also references *Haring v. Prosise*, 462 U.S. 306, 103 S.Ct. 2368, 76 L.Ed.2d 595 (1983). Yet, that case is of no materiality to this action. *Haring* merely held a section-1983 action was not barred by collateral estoppel because a state court conviction had never considered the Fourth Amendment violation being asserted. Again, there is no constitutional issue implicated by Rilea's case. But most importantly, the very reason for Rilea's payment of the fine, costs and surcharge *was his conviction for speeding*.

Rilea did not owe anything absent his conviction for speeding. The speeding conviction even triggered the amounts owed for the fine, costs and surcharge. Rilea's petition alleged those convicted paid "*scheduled* fines, statutory surcharges, court costs." Second amended petition, paragraph 118; App. p. 28 (emphasis added). *See also* Iowa Code § 805.8A(14)(i) (scheduled fine for road work zone violations). Therefore, Rilea's suit necessarily attacks the validity of his underlying conviction for speeding. The issue of speeding was surely not a sideshow to the Warren County action; it was the *only* reason for that action being on the docket. Rilea's conviction resulted in him paying the fine, costs and surcharge he now seeks

to have returned to him. Those sums represent Rilea's only claimed damages in this case.[5]

Lest there be any uncertainty about this case being nothing more than an improper collateral attack upon Rilea's judgment of conviction in Warren County, all doubt was dispelled by Rilea just before the summary judgment motion record was closed in district court. Rilea filed on March 27, 2020, a "Written Argument in Lieu of Hearing." App. pp. 237-240. Rilea proceeded in that submission to attack his guilty plea stating: "It is simply not just to allow a guilty plea to stand in every circumstance." Written argument, p. 2; App. p. 238. Rilea even cited to *Schmidt v. State*, 909 N.W.2d 778, 786 (Iowa 2018), for the notion his case fell within an exception to the general rule precluding extrinsic challenges to guilty pleas. Rilea argued his was not "a guilty plea 'in open court with assistance of counsel, knowingly and understandingly.'" Written argument, p. 2; App. p.

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[5]It is the same song, second verse, in relation to Rilea's citation to *State v. Fitz*, 265 N.W.2d 896 (Iowa 1978). He cites *Fitz* for the proposition an invalid arrest does not always invalidate a conviction. However, *Fitz* had nothing to do with a civil claim seeking unjust enrichment. It certainly has no bearing upon this action where to grant the relief Rilea seeks, this Court would essentially have to look away from the reality of Rilea lawfully owing the fine and related amounts because of his conviction. There is nothing "unjust" about Rilea paying amounts in accordance with a binding adjudication imposing the liability upon him. It boils down, yet again, to Rilea using this action as an improper means of waging a collateral attack upon a final and conclusive judgment.

238. If this does not constitute an improper collateral attack upon a prior, final judgment, then it is hard to imagine what such an attack would look like. Rilea in 2020 was offering arguments in this Polk County action designed to vacate his conviction for speeding entered in 2016 in Warren County.

Rilea argued his plea to the speeding charge should be disregarded because it did not comply with Iowa R. Crim. P. 2.8(2)(b). Written argument, p. 2; App. p. 238. However, rule 2.8(2)(b) pertains to indictable criminal offenses and sets forth the "open court" colloquy between the defendant and the court concerning the nature of the charge, the possible punishment, its potential impact on an individual's immigration status, the right to a jury trial, *etc.*

Rilea, however, was not charged with an indictable offense. He was charged with speeding, a simple misdemeanor. His guilty plea was permitted, by statute, to be entered by simply mailing in the citation and fine without any appearance in court. *See* Iowa Code § 805.9(1) (allowing the defendant to "sign the admission of violation on the citation" and mail in the fine together with the related costs). An admission made in this manner "constitutes a conviction." *Id.* This is exactly what Rilea did; he paid his

ticket as the law permits without need of coming to court. *See* affidavit of Rick Rilea at para. 7 (plaintiffs' exhibit 2); App. p. 270.

Rilea's plea of guilty by remitting the scheduled amounts for his traffic ticket was perfectly valid. Nothing in the law invalidates guilty pleas or removes them from the rule they waive all defenses simply because a plea is lawfully permitted to be received in writing without need of appearance in court. For instance, even in respect to indictable charges such as serious and aggravated misdemeanors, Iowa R. Crim. P. 2.8(2)(b) explicitly permits courts to waive the open court process and receive guilty pleas in writing. Therefore, Rilea was wrong about his plea being invalid, but that is really a side issue. The more important point is Rilea's waging of an argument designed to set aside his plea proves beyond any doubt the defendants were correct in labelling this Polk County action an improper collateral attack on the Warren County proceedings.

Plus, as noted by the district court, Rilea argued his guilty plea was not knowingly made because he did not realize he might have made a legal challenge regarding lack of DOT MVE officer authority. Ruling, p. 6; App. p. 256. This is the essence of an improper collateral attack on a prior judgment, and Judge Nelmark rightly noted:

> The same could be said of many guilty pleas. For example, someone might plead guilty without understanding that certain

> evidence in a case could be suppressed. More importantly, even if there were a valid basis to set aside Mr. Rilea's conviction, any current challenge to it would be untimely.

Ruling, pp. 6-7; App. pp. 256-257.

The district court's reference to the untimely nature of Rilea's effort to challenge his conviction was also pertinent. This case did not present the proper forum for seeking postconviction relief. *See*, *e.g.*, Iowa Code § 822.3 ("A proceeding is commenced by filing an application verified by the applicant with the clerk of the district court in which the conviction or sentence took place."). However, putting aside the fact this Polk County action cannot serve as a forum for Rilea to challenge the validity of his conviction in Warren County, by time of Judge Nelmark's ruling in 2020 any challenge would have been time-barred anyway.

Rilea was adjudicated guilty of the speeding charge in September 2016 in Warren County. *See* defendants' exhibit C; App. pp. 178-181. He failed to timely pursue postconviction relief as provided for in Iowa Code chapter 822:

> Iowa Code section 822.3 provides a PCR [postconviction relief] application must be filed within three years of the date of conviction. An exception exists if a ground of fact or law could not have been raised within the applicable time period. Iowa Code § 822.3. However, the grounds for Holdsworth's PCR action existed within the limitation period, and therefore, the exception provided in section 822.3 is inapplicable.

Holdsworth v. State, 862 N.W.2d 414 (Table) (Iowa App. 2015) 2015 WL 405886 *1.

By pleading guilty to the speeding charge, Rilea waived any defenses. *See*, *e.g.*, *State v. Henderson*, 926 N.W.2d 561 (Table) (Iowa App. 2018) 2018 WL 6338605*3:

> Henderson's present due process challenge to the delay in competency-restoration treatment does not fall into any of the established exceptions to the doctrine that "[a] valid plea waive[s] all defenses and the right to contest all adverse pretrial rulings." *Schmidt*, 909 N.W.2d at 775 (*sic*) [909 N.W.2d at 785]. Henderson's challenge to the district court's pretrial rulings on the same issue also does not fall into any of the exceptions to the waiver doctrine. Accordingly, we conclude Henderson's guilty plea amounted to a waiver of his right to raise the issue on appeal.

And Rilea has never claimed he was innocent. He concedes he committed the speeding offense. The district court correctly observed Rilea, therefore, had no basis to make any actual-innocence claim of the sort recognized in *Schmidt v. State*, 909 N.W.2d 778 (Iowa 2018). Ruling, p. 7; App. p. 257. Rilea's guilty plea waived any objection predicated upon lack of DOT MVE officer authority.

In paragraph 119 in Count III of the second amended petition, Mr. Rilea alleged his payment was "involuntary, and made under coercion, duress, and/or mistake." App. p. 28. But there was no evidence offered to indicate the defendants, or anyone else, forced Mr. Rilea to remit payment

for the ticket. Proof must be offered to avoid summary judgment; not allegations. Iowa R. Civ. P. 1.981(5). Nor, as noted, would this case be the proper forum for challenging his plea of guilty in any event.

Rilea's contention he did not understand to raise the defense of lack of DOT peace officer authority was wholly disingenuous. Rilea certainly had the understanding to make the argument concerning DOT peace officer authority when he filed the second amended petition in this action on November 21, 2016, and he was a named party to the Iowa Supreme Court case decided in 2018 (*Rilea I*). If Rilea thought he had grounds to set aside his prior conviction on the notion the DOT officer exceeded her statutory enforcement authority, Rilea knew full well within the three-year limitation period afforded for postconviction relief claims how to make such an argument. He never asserted it in the manner required by law. Instead, he tried to use this action as an improper medium for collaterally attacking the Warren County judgment.

Judge Nelmark's words correctly and succinctly summarize why Rilea's case is without merit:

> In sum, there is no mechanism available to Mr. Rilea for challenging his criminal conviction. He cannot overcome this obstacle by seeking a portion of the same relief in this civil proceeding. As long as the conviction stands, the fine was lawfully paid to the State of Iowa and there is no unjust enrichment or illegal exaction.

Ruling, p. 7; App. p. 257. Judge Nelmark should be affirmed. Summary judgment was properly granted in the defendants' favor.

II.

THERE WAS NO "UNJUST ENRICHMENT" BECAUSE (1) MR. RILEA NEVER PAID ANYTHING TO DEFENDANTS LORENZEN, LOWE, TROMBINO OR DOT, (2) MCSAP FUNDS WERE NOT PAID AT RILEA'S EXPENSE AND (3) RILEA'S PAYMENT OF A FINE AND RELATED CHARGES TO THE STATE OF IOWA CANNOT AS A MATTER OF LAW BE DEEMED AN "UNJUST" ENRICHMENT UNDER THESE CIRCUMSTANCES.

A. Alternative ground for affirmance.

The district court's summary judgment ruling may be affirmed on any alternative basis urged by the defendants in district court. No cross appeal is necessitated. *See Duck Creek Tire Service v. Goodyear Corners*, 796 N.W.2d 886, 893 (Iowa 2011):

> It is well-settled law that a prevailing party can raise an alternative ground for affirmance on appeal without filing a notice of cross-appeal, as long as the prevailing party raised the alternative ground in the district court.

The defendants urged Judge Nelmark to find there had been no enrichment on the part of any of the defendants. Judge Nelmark addressed this in his ruling. Ruling, pp. 3-5; *see also* motion for summary judgment, pp. 8-9, 19-21, 27-30; defendants' reply to plaintiff's resistance to the

motion for summary judgment, pp. 9-29, 35-41; defendants' reply to Rilea's written argument in lieu of hearing, pp. 7-9; App. pp. 127-128, 138-140, 146-149, 191-211, 217-223, 247-249, 253-255.

B. Defendants Lorenzen, Lowe, Trombino and DOT received no payment or benefit from Rilea.

Rilea's brief is not clear whether he continues to seek to preserve the claims he made against defendants Lorenzen, Lowe, Trombino and DOT. In his conclusion, he appears to seek an unqualified reversal of Judge Nelmark's summary judgment ruling. Accordingly, in an abundance of caution, the defendants Lorenzen, Lowe, Trombino and DOT hasten to point out the fine, surcharge and costs paid by Mr. Rilea *never went to them*. Nor did Rilea offer any evidence establishing he paid the fine-related sums to Lorenzen, Lowe, Trombino or DOT. To the contrary, the undisputed evidence demonstrated any fines, surcharges and court costs were paid through the court system as court debt. *See* affidavit of Mark Lowe (defendants' exhibit D); App. p. 182. Judge Nelmark noted it was the judicial branch that received the funds from Rilea. Ruling, pp. 4-5; App. pp. 254-255.

The elements of an unjust enrichment claim are threefold: (1) the defendant's receipt of a benefit, (2) payment of the benefit was at plaintiff's expense and (3) the retention of the benefit by the defendant would be

"unjust" under the circumstances. *State ex rel. Palmer v. Unisys Corp.*, 637 N.W.2d at 154-55. Because the fine, surcharge and court costs were not remitted to or received by Lorenzen, Lowe, Trombino or DOT, there is no viable "unjust enrichment" claim to be asserted against those defendants, and, for this alternative reason, summary judgment in their favor must be affirmed.

C. MCSAP funds distributed by the federal government to the State of Iowa through DOT did not confer any benefit at Rilea's expense.

Rilea, in district court, suggested a "benefit" had been received on the theory DOT's enforcement actions, such as the speeding citation Rilea was issued, increased federal funding DOT received through the Motor Carrier Safety Assistance Program (MCSAP). Ruling, pp. 3-4; App. pp. 253-254.[6] However, Rilea offered no proof money expended by him somehow unleashed a chain of events resulting in the defendants obtaining MCSAP monies at Rilea's expense. *See State ex rel. Palmer v. Unisys Corp.*, 637 N.W.2d 142, 155 (Iowa 2001) ("The critical inquiry is that the benefit received be at the expense of the plaintiff.").

[6]Rilea has not reasserted this position in his appellate brief. Failure to argue and cite authority waives the appeal. *See* Iowa R. App. 6.903(2)(g)(3). Nonetheless, since MCSAP funding was addressed in Judge Nelmark's ruling, the defendants will explain why funding through this federal program did not come to the State or DOT at Rilea's expense.

This was a summary judgment motion. If Rilea thought payment of the amounts for the speeding charge somehow resulted in one or more of the defendants gaining *at his expense* an increased amount of federal MCSAP funds, Rilea was obligated to come forward with specific, admissible facts demonstrating a genuine issue for trial. *See* Iowa R. Civ. P. 1.981(5). He could not rest on arguments or allegations to resist the defendants' motion. *Id*.

MCSAP monies were paid to the various states, along with Puerto Rico and other U.S. jurisdictions, through a complex funding formula applied proportionally by the federal government. *See*, *e.g.*, defendants' exhibit E (Federal Motor Carrier Safety Administration Motor Carrier Safety Assistance – Formula Funding); App. p. 231. Criteria for determining receipt of basic program funds were based upon several items, including a state's population, special fuel consumption, vehicle miles traveled (VMT) and 1997 road miles (all highways) as defined by the Federal Highway Administration (FHWA). *See also* 49 CFR § 350.323 (2018); App. p. 354.[7] Additionally, traffic enforcement was but one element of five within the

[7]CFR citations in this brief are from the Federal Motor Carrier Safety Regulations Plus Edition (October 2018) published by Mancomm, Inc. They are illustrative of how the MCSAP program worked, though they may not be the regulations currently in effect in 2020.

MCSAP program. The program also extended to activities which include (1) driver/vehicle inspections, (2) compliance reviews, (3) public education and awareness and (4) data collection. *See* 49 CFR § 350.109 (2018); App. p. 352.

An affidavit from Mark Lowe was filed in response to Count II of Rilea's second amended petition. Rilea had sought to enjoin DOT peace officers from conducting enforcement activities unrelated to operating authority, registration, size, weight and load, without defining precisely what offenses he intended to preclude DOT from enforcing. *See* Lowe affidavit filed January 10, 2017, at para. 8 and 9, Rilea's exhibit 1; App. pp. 266-268. Lowe's affidavit was filed prior to Judge Ovrom's dismissal of Rilea's claim for injunctive relief.

Rilea's wildly broad injunctive relief claim presented the real possibility of hog-tying DOT law enforcement to the detriment of public safety and, given its unfocused scope, receipt of MCSAP funds could be jeopardized as well. This had ramifications beyond DOT. Mr. Lowe noted DOT, as Lead State Agency for Iowa, distributed a substantial portion of the MCSAP funds received to the Iowa State Patrol ($1,418,842.93 in Fiscal Year 2017). Lowe affidavit, para. 5, Rilea's exhibit 1; App. p. 266.

Even before the 2017 amendment to Iowa Code section 321.477 (2016), which enlarged the statutory enforcement authority of DOT MVE officers, the decision in *Rilea I* made it clear there were, in fact, violations of law unrelated to operating authority, registration, size, weight and load which were, nevertheless, well within the authorized scope for DOT MVE officers to act upon without need of additional statutory enablement. For example, *Rilea I* confirmed DOT MVE officers *always* had the authority to make arrests for Operating While Intoxicated (OWI) if they had the training specified by Iowa Code section 321J.1(8)(e). *Rilea I*, 919 N.W.2d at 392. Similarly, DOT officers had full authority under Iowa Code section 321.380 to stop vehicles and cite drivers who violated Iowa's laws pertaining to school buses. *Rilea I*, 919 N.W.2d at 392, fn. 8.

However, in light of Rilea's injunctive relief claim, even long-standing, authorized enforcement activities could be shut down because, at least in respect to non-commercial vehicles, OWI and school bus infractions could be claimed to be unrelated to operating authority, registration, size, weight and load. Drunk driving enforcement has long been a major element of Iowa's highway traffic enforcement regime. The Iowa Supreme Court has declared Iowa's implied-consent law exists to "reduce the holocaust on our highways part of which is due to the driver who imbibes too freely of

intoxicating liquor." *See*, *e.g.*, *Welch v. Iowa Dept. of Transp.*, 801 N.W.2d 590, 594 (Iowa 2011), quoting *Severson v. Sueppel*, 260 Iowa 1169, 1174, 152 N.W.2d 281, 284 (1967).

Defendant Lowe was rightfully concerned the undefined scope of Rilea's injunctive relief claim might improperly shut down traffic enforcement throughout a wide range of areas to the detriment of public safety. Mr. Lowe noted one element for participation in the MCSAP program was "traffic enforcement." *See* Lowe affidavit, Rilea's exhibit 1, at para. 6. App. p. 267. Also, the MCSAP program largely relates to commercial motor vehicle activity which has been a core function of DOT motor vehicle enforcement for many decades. *See*, *e.g.*, 49 CFR § 350.101(a) (2018) ("The MCSAP is a Federal grant program that provides financial assistance to States to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles (CMVs)."). App. p. 351.

DOT has long had the power to engage in traffic enforcement actions relating to commercial motor vehicle "operating authority" issues, including the point in time when Rilea received his citation in 2016. *See* Iowa Code § 321.449(1)(a) (2016) (motor carrier safety rules); 49 CFR 392.6 (2018) (authorizing speed-law enforcement in relation to commercial motor

vehicles); *see also* Iowa Code § 321.477 (2016) (authorizing the enforcement of the "operating authority" provisions). App. p. 356.[8]

Because there were traffic enforcement activities unrelated to operating authority, registration, size, weight and load which, even under the *Rilea I* rationale, DOT MVE officers long had the authority to engage in, it could not be shown by Rilea the State of Iowa or DOT ever received anything they were not entitled to already obtain under the MCSAP program.

In addition, even if Iowa received MCSAP money in excess of its fair share, this would have been at the expense of the federal government and not Rilea. If Iowa failed to perform according to its approved plan or was not meeting the conditions for MCSAP funding, the Federal Motor Carrier Safety Administration could withhold funds on a percentage basis. *See* 49 CFR § 350.215 (2018). App. p. 353. However, even if a percentage of MCSAP funds had been withheld, there was no legal authority under which the State of Iowa would have returned to Rilea the fine, surcharge and court

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[8]DOT, by rule, adopts federal motor carrier and hazardous materials provisions. *See* 761 IAC 520.1(1) (2020). App. p. 357. Those provisions implicate "operating authority" issues in relation to commercial motor vehicles. Rilea's attempt to enjoin DOT law enforcement, without precisely defining what fell within or beyond the meaning of authorized "operating authority" activity, posed a substantial threat to the agency's legitimate law enforcement functions prompting need for Mr. Lowe's affidavit.

costs he paid through the Iowa court system on his speeding charge. This is because neither the State of Iowa nor DOT were receiving funds that belonged to Rilea when the MCSAP funds were distributed by the federal government. Judge Nelmark properly noted this as well:

> The federal government provided grant funds of which IDOT kept a portion. Mr. Rilea was never entitled to any portion of the MCSAP funds. Thus, even if IDOT kept more than its fair share, its benefit was not at Mr. Rilea's expense.

Ruling, p. 4; App. p. 254.

Rilea, in short, offered no evidence showing the fine-related money he paid through Iowa's court system was a linchpin for DOT's receipt of MCSAP monies. There was no evidence MCSAP monies were ever distributed at Rilea's expense. This affords an alternate basis to affirm Judge Nelmark's award of summary judgment in the defendants' favor.

D. There is nothing "unjust" in the State of Iowa's receipt of the fine, surcharge and court costs from the lawbreaker who committed the offense.

Judge Nelmark agreed there was no evidence Rilea's payment was made to any recipient other than the "judicial branch." Ruling, pp. 4-5; App. pp. 254-255. His rationale accepts the fact the individual defendants and DOT did not receive any funds from Rilea. Under the elements required to prove unjust enrichment, that fact serves as an alternate reason to uphold

summary judgment in favor of defendants Lorenzen, Lowe, Trombino and DOT as noted above.

Judge Nelmark, however, did not agree with the defendants' argument there was no "unjust" enrichment because of Rilea's status as one who committed the offense with which he was charged. *See* ruling, p. 5, fn. 2; App. p. 255. He found there had been receipt of funds by the State of Iowa from citations that were unlawfully issued. *Id.* Yet, receipt of the funds alone is not enough to establish a claim for "unjust" enrichment.

The defendants again note Justice Mansfield's observation in his opinion, concurring in part and dissenting in part, in *Weizberg v. City of Des Moines*, 923 N.W.2d 200, 225 (Iowa 2018). Justice Mansfield opined that someone who had paid a municipal infraction pursuant to an unauthorized administrative process may nonetheless be precluded from pursuing a damages claim if it was established the individual "committed the traffic violation." *Id.* Justice Mansfield's observation fits Rilea's situation like a glove.

Restatement (Third) of Restitution and Unjust Enrichment, section 63, disqualifies a claim for restitution when the claimant comes to the transaction with "Unclean Hands":

> Recovery in restitution to which an innocent claimant would be entitled may be limited or denied because of the claimant's

> inequitable conduct in the transaction that is the source of the asserted liability.

In other words, equity does not view a transaction as "unjust" if the claimant is disqualified from recovery because the claimant is not innocent. This is a principle in full bloom with Rilea. He was guilty of speeding. He broke the law. He received his just desserts. He has no recoverable damages.

The *Westra* decision offers instruction in this instance as well. Westra claimed his license revocation should be rescinded because the vehicle stop resulting in his license revocation was unauthorized in light of the Iowa Supreme Court's holding in *Rilea I*. *See Westra*, 929 N.W.2d at 757-758. Westra argued the DOT MVE officer had acted in excess of his statutory authority in violation of the Iowa Constitution's search-and-seizure clause in Article I, section 8, and Iowa's due process clause in Article I, section 9.[9] The *Westra* Court rejected these claims in upholding the revocation of Westra's driving privileges. The decision was predicated upon a finding the DOT MVE officer had reasonable suspicion and probable cause to believe an offense had been committed. *Westra*, 929 N.W.2d at 765.

[9]Loss of driving privileges also exacts a monetary loss. *See* Iowa Code § 321J.17(1) (2017). *See also State v. Pettijohn*, 899 N.W.2d 1, 41 (Iowa 2018) (Chief Justice Cady concurring specially) (noting there is the imposition of a $200 "civil fine" when DOT revokes a person's driving privileges under Iowa's implied-consent law).

Westra, like Rilea, did "not dispute he violated the traffic laws." *Id. at* 763. The *Westra* Court found the officer's conduct to be "merely in excess of the officer's statutory authority" and it did not "trigger a constitutional right to have evidence suppressed." *Id.* The Court went on to note Iowa Code section 80.22 (assigning enforcement of police powers to the department of public safety) simply allocated responsibility within state government and was not intended "to protect motorists by reducing vehicle stops." *Id.* at 765.

Westra, admittedly, did not construe an "unjust enrichment" claim. But more significantly, *Westra* decided a constitutional claim. Yet, Westra's plea to have DOT's action set aside on state constitutional grounds was rejected. It is fair to conclude *no injustice* was visited upon Westra. After all, it has been said the Iowa appellate courts "should reverse *only when justice* would not be served." *Stumpf v. Reiss*, 502 N.W.2d 620, 623 (Iowa App. 1993) (emphasis added). In *Westra*, DOT's agency action was affirmed.

Accordingly, if because probable cause existed to support the traffic stop of Westra's vehicle it was not "unjust" for the Court to decline to order the return to Westra of his driving privileges, or order he be relieved from remitting the $200 implied-consent civil penalty to DOT, it should likewise

not be "unjust" to decline to return to Mr. Rilea the fine, surcharge and costs he paid pursuant to his guilty plea to the charge of speeding, and especially when he concedes he was, in fact, speeding. An unjust enrichment claim implicates consideration of whether something "unjust" has occurred. *See State ex rel. Palmer v. Unisys Corp.*, 637 N.W.2d at 154-55 (requiring a determination whether a defendant's retention of the sum paid would be "unjust" under the circumstances). *Westra* strongly indicates there is no injustice under these circumstances where (1) Rilea was observed violating the law by the DOT officer, (2) Rilea concedes he was guilty as charged, (3) Rilea entered a plea of guilty and his guilt was adjudicated by an Iowa court thereby compelling the payment of the fine and related amounts and (4) Rilea's conviction remains intact.

There is nothing at all "unjust" about Rilea paying the fine, surcharge and court costs commensurate with the offense he admitted he committed. The payment was consistent with the court's adjudication in Warren County. *See* Restatement (Third) of Restitution and Unjust Enrichment § 1 comment b (unjust enrichment is not to be viewed in an open-ended manner but instead *whether there was justification* for the enrichment consistent with the law). There was absolute legal justification for the State's receipt of the sums from Rilea. He indisputably committed the offense he was charged

with and was adjudicated liable to pay the amounts he remitted. Rilea's hands are sufficiently "unclean" to disqualify him from pursuing an "unjust enrichment" suit. A legal basis justified the payment he made through the judicial system. For this alternative reason, the grant of summary judgment in the defendants' favor should be affirmed.

III.

RILEA'S CLAIM IS BARRED BY PRINCIPLES OF SOVEREIGN IMMUNITY.

A. Alternative ground for affirmance.

The district court's summary judgment ruling, as noted earlier, may be affirmed on any alternative basis urged by the defendants in district court without need for cross appeal. *Duck Creek Tire Service v. Goodyear Corners*, 796 N.W.2d at 893.

The defendants repeatedly urged the district court to bar Rilea's unjust enrichment claim on grounds of sovereign immunity. *See*, *e.g.*, motion for summary judgment, pp. 30-37; defendants' reply to plaintiff's resistance to the motion for summary judgment, pp. 43-46; defendants' resistance to motion to lift stay and motion to dismiss, pp 1-15; motion to dismiss or strike, pp. 39-49; App. pp. 70-80, 98-112, 149-156, 225-228. Judge Nelmark rejected this ground advanced by the defendants. Ruling, pp. 5-6; App. pp. 255-256. In doing so, he adopted the reasoning previously

articulated by Judge Ovrom in her ruling of March 20, 2017. Judge Ovrom ruling, pp. 6-10; App. pp. 92-96. *See also* ruling of Judge Beattie; App. pp. 114-119.

Judge Nelmark's ruling was certainly correct in granting summary judgment in the defendants' favor because Rilea's suit was nothing more than a collateral attack on a prior, final judgment. However, as demonstrated by the various alternate grounds asserted in this brief, a multitude of reasons supported denial of Rilea's claim. The discussion below concerning sovereign immunity is but one more reason Rilea's suit should be put to rest.

B. Unjust enrichment and sovereign immunity.

Rilea's action was brought against the State of Iowa, DOT (a state agency) and defendants Lorenzen, Lowe and Trombino in their capacities as officials of the State of Iowa. In such a scenario, the question whether sovereign immunity permits the suit to proceed is obviously presented.

Judge Nelmark held Rilea was pursuing a "quasi-contract" claim rather than a tort suit. Ruling, p. 5; App. p. 255. He also concluded, adopting the rationale of Judge Ovrom, the matter was outside the scope of the Iowa Tort Claims Act in Iowa Code chapter 669. *Id.*

1. Sovereign immunity and implied-contract claims.

Rilea's suit, even if deemed a form of contract claim, raises a substantial question whether Iowa's sovereign immunity has been waived to allow for the State, its agencies and its officers to be sued for unjust enrichment in this scenario.

Unjust enrichment claim has been raised in matters involving the Iowa Department of Human Services (DHS) where, without explicitly deciding whether the doctrine was viable against the sovereign, it was concluded there had been no enrichment. *See*, *e.g.*, *Ahrendsen ex rel. Ahrendsen v. Iowa Department of Human Services*, 613 N.W.2d 674, 679 (Iowa 2000) (en banc); *Krieger v. Iowa Department of Human Services*, 439 N.W.2d 200, 203 (Iowa 1989). Most recently, in *Endress v. Iowa Department of Human Services*, 944 N.W.2d 71, 78-81 (Iowa 2020), a plurality agreed to remand a case to district court with directions it be sent back to DHS to consider whether a care provider's unjust enrichment claim afforded a defense (offset) against DHS's recoupment claim. But has the State of Iowa waived its sovereign immunity to allow Rilea's claim when he was adjudicated guilty and paid sums required by statute? The answer is in the negative.

Unjust enrichment has been termed a form of implied contract. But that alone does not answer the question on the table. In *Dolezal v. City of Cedar Rapids*, 326 N.W.2d 355, 359-360 (Iowa 1982), it was said:

> We distinguish, however, between immunity accorded the state government, and the lesser level of immunity accorded local governments, which historically have been statutorily and judicially amenable to suits on implied contract, the older designation for unjust enrichment.

Hence, Rilea's suit urging implied-contract grounds must contend with the State's sovereign immunity which, as indicated in *Dolezal*, is a different breed of cat infused with a far more potent strain of sovereign immunity.

Justice McDonald (concurring in part, dissenting in part) noted in *Endress*:

> The appellate courts of this state have explicitly rejected the contention that a party can demand payment from the government under a theory of quantum meruit or unjust enrichment where the payment would be in contravention of statute.

944 N.W.2d at 94-95. He prefaced that observation with citation to federal cases holding there was no general waiver of sovereign immunity by the United States in respect to unjust enrichment. *See United States v. Craig*, 694 F.3d 509, 513 (3d Cir. 2012); *United States v. $30,006.25 in U.S. Currency*, 236 F.3d 610, 614 (10th Cir. 2000), cited at 944 N.W.2d at 94.

Extending Rilea the relief he seeks would clearly contravene Iowa's statutory framework. Rilea remains subject to his conviction in Warren County for speeding in a road work zone. Rilea's fine was fixed by statute. *See* Iowa Code § 805.8A(14)(i). *See also* Iowa Code § 805.8(1) (declaring violations of section 805.8A as imposing a scheduled fine "as provided in those sections" with a "criminal penalty surcharge …added to the scheduled fine").

Therefore, given Rilea's conviction, returning the fine, surcharge and costs to him would be contrary to statute. No waiver of sovereign immunity has been extended to allow Rilea to make an unjust enrichment claim which, effectively, overrides Rilea's statutory obligation to remit the fine, surcharge and costs. Ordering the money returned to Rilea would undermine the legislature's intent in enacting section 805.8A(14)(i) (doubling fines for road work zone violations to promote public safety). *See also State Public Defender v. Iowa District Court for Woodbury County*, 731 N.W.2d 680, 684 (Iowa 2007) (permitting a quantum meruit claim to proceed would supersede statutory requirements and improperly undercut legislative intent); *Jacobsma v. Iowa District Court*, 745 N.W.2d 96 (Table) 2007 WL 4553636 *3 (Iowa App. 2007) (attorney's unjust enrichment claim rejected because it conflicted with legislature's requirements for determining fees).

Judge Nelmark found payment of the fine by Rilea "sufficient" to subject the State to liability under the rationale expressed in *Krieger v. Iowa Department of Human Services*, 439 N.W.2d 200 (Iowa 1989). *See* ruling, pp. 5-6; App. pp. 255-256. *Krieger*, however, never directly faced the issue of whether an unjust enrichment claim could be asserted against the State or one of its agencies. Instead, the case merely concluded DHS had not been "enriched" under the circumstances of that case. 439 N.W.2d at 203.

The State of Iowa recognizes it may be sued on the express contracts it enters into. *See Kersten Co. v. Dept. of Social Services*, 207 N.W.2d 117, 120 (Iowa 1973): "[T]he State, by entering into a contract, agrees to be answerable for its breach and waives its immunity from suit *to that extent.*" (Emphasis added). *See also State v. Dvorak*, 261 N.W.2d 486, 489 (Iowa 1978) (State may be sued when it assumed obligations attendant with land ownership). However, both *Kersten* and *Dvorak* were limited to scenarios where the State had voluntarily undertaken legal relationships. This distinction was noted in *Lee v. State, Polk County Clerk of Court*, 815 N.W.2d 731, 740 (Iowa 2012): "The two cases [*Kersten* and *Dvorak*] reflected our belief that the State is answerable for the legal relationships it *voluntarily* creates." (Emphasis added). *Lee* rejected a claim there had been a constructive or implied waiver of sovereign immunity because the self-

care provisions of the Federal Medical Leave Act (FMLA) had been inserted into an employee handbook. Knowledge of FMLA statutory provisions alone was not deemed as proof of any voluntary offer to pay money damages if the FMLA was violated. *Id.* at 743.

Judge Nelmark found the State had created a voluntary relationship vis-à-vis Rilea when the DOT MVE officer issued him the citation. Ruling, p. 5; App. p. 255. He concluded an implied contract resulted, which included terms providing "that if the fine is paid, no further punishment will be levied." *Id*. The defendants respectfully disagree Rilea's commission of a crime, along with payment of the sums the law required upon conviction, placed the State in the position of "voluntarily" entering into a relationship with Rilea sufficient to authorize an unjust enrichment claim. The enforcement of the law is not the voluntary creation of a relationship with an offender akin to a commercial transaction between willing parties. Instead, a criminal offense is an act committed against the State and the civil society. *See also State v. Tuemier*, 2005 WL 637814 *2 (Ohio App. 2005): "[A] crime is an offense against the state, not an individual."

Therefore, enforcement of Iowa Code section 321.285, resulting in a conviction requiring payment of a fine and related amounts pursuant to Iowa Code sections 805.8(1) and 805.8A(14)(i), is not the *voluntary* creation of a

legal relationship with an offender sufficient to override the State's sovereign immunity.[10] Rather, it is the enforcement of the statutory law. There has been no waiver of sovereign immunity in this circumstance to permit Rilea's claim. For this alternate reason, the denial of Rilea's claim should be affirmed.

2. The Iowa Tort Claims Act.

It is undisputed Rilea, prior to commencing this suit, never filed a claim under Iowa Code section 669.13(1) (Iowa Tort Claims Act provision requiring exhaustion of administrative claim before commencing suit). *See* motion to dismiss, filed December 6, 2016, pp. 39-43 and exhibit C to the motion (Giebelstein affidavit); App. pp. 70-74, 86. Judge Ovrom, though concluding the Iowa Tort Claims Act was not implicated by Rilea's suit, nonetheless cautioned Rilea it would be prudent to file an administrative tort claim anyway. She even said it would "be wise" to do so. Ruling filed March 20, 2017, p. 10, fn. 2; App. p. 96.

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[10] If citation issuance to a law violator creates an implied contract, where does this end? How about an officer's exercise of discretion *not* to issue a ticket? Can a future law violator who shows the officer has previously given violators warnings without a citation defend against citation issuance on the ground the officer had created an implied contract *not* to issue citations, but instead give warnings? This illustrates why law enforcement and ticket issuance should not be viewed as creating implied contracts.

Plaintiffs have labelled their claim as unjust enrichment. In applying the law, however, courts look to the substance of what is claimed. *See*, *e.g.*, *McGinnis v. Iowa Clinic*, 776 N.W.2d 110 (Table), 2009 WL 2424643 *3 (courts will look to the substantive allegations to determine what is being raised in a lawsuit). So, even if Rilea's claim is one of "unjust enrichment," did Rilea in making this claim likewise assert matter which could fall within the meaning of "Claim" in Iowa Code chapter 669? Yes, he did.

"Claim" in Iowa Code chapter 669 includes a request for money damages for the alleged "wrongful act" of a state employee while acting within the scope of the employee's office or employment. Iowa Code § 669.2(3)(a) and (b). Rilea, in his appellate brief at footnote 5, asserts: "[I]t is undisputed that the MVE employees *did wrong*." (Emphasis added). In other words, he charged "wrongful" acts on the part of state employees, placing his request for relief within the meaning of "Claim" as defined in the Iowa Tort Claims Act. His brief is filled with overheated rhetoric about state officials *knowingly* issuing illegal citations. This sort of bluster has no factual basis as discussed earlier, but it demonstrates Rilea purports to accuse the State, a state agency and various state officers with the commission of acts falling within the term "Claim" in Iowa Code chapter 669.

The State of Iowa has extended only a limited waiver of sovereign immunity through its adoption of Iowa Code chapter 669. *See*, *e.g.*, *Hyde v. Buckalew*, 393 N.W.2d 800, 802 (Iowa 1986) (Iowa Tort Claims Act described as a limited waiver of sovereign immunity). An administrative remedy through submission of proper claim presentment must first be exhausted before a court gains subject matter jurisdiction. Otherwise, the State's sovereign immunity remains. A synopsis of relevant cases supporting this proposition is found in *Matter of Estate of Voss*, 553 N.W.2d 878, 880 (Iowa 1996) (holding the exhaustion requirement jurisdictional). *See also McFadden v. Dept. of Transp.*, 877 N.W.2d 119, 121-122 (Iowa 2016) (discussion of exhaustion requirement with administrative claim presentment referred to as jurisdictional). Lack of subject matter jurisdiction may be raised in any manner and at any point. *State v. Ryan*, 351 N.W.2d 186, 187 (Iowa 1984) ("Want of subject matter jurisdiction may be raised at any stage of the proceedings.").

Judge Nelmark agreed Rilea's claim would be barred if it fell within the Iowa Tort Claims Act:

> The Court agrees that *if* Plaintiffs' claim were (*sic*) subject to the Iowa Tort Claims Act (ITCA), it could not survive because Plaintiffs did not follow the procedures of the ITCA and/or because the claim would be exempted.

Ruling, p. 5; App. p. 255 (emphasis in the original). He was certainly correct on that point. Judge Nelmark even noted Rilea's claim would be vulnerable to the immunity retained in Iowa Code section 669.14(2) (barring claims relating to collection of any fee). Ruling, p. 5; App. p. 255. There are also the immunities in Iowa Code section 669.14(4) (barring claims for false arrest, malicious prosecution, abuse of process, deceit and misrepresentation). Those would bar Rilea's suit as well, which is likely why Rilea labelled his claim as being for unjust enrichment. Iowa Code chapter 669 was a dead-end street Rilea understandably did not wish to venture upon.

Moreover, had Rilea filed an administrative claim under Iowa Code chapter 669, in addition to having to contend with the statutory immunities in Iowa Code section 669.14(2) and (4), Rilea's claim for relief would still face the reality of seeking recovery for the fine, costs and surcharge paid as a result of a final adjudication which, to this day, remains on the books in Warren County. He would again be waging an improper collateral attack upon a final judgment, and his claim would again be barred for the reason relied upon by Judge Nelmark in his ruling. This is so whether the claim is deemed a contract-based action, a tort-based action or even a combination thereof.

Therefore, perhaps the sovereign immunity argument is the other side of the same coin. All roads circle back to the undisputed fact Rilea remains subject to the court's adjudication of his guilt on the speeding charge in Warren County. A veritable "horn of plenty" exists barring Rilea's claim. Sovereign immunity is just one more item to be added to a substantial list.

CONCLUSION

The district court properly granted summary judgment in favor of the defendants. Rilea's action is nothing more than an improper collateral attack upon his conviction for speeding in Warren County. He admits he committed the offense and upon pleading guilty he was adjudicated to have been speeding, prompting the assessment of the fine, costs and surcharge the law requires. The State, in collecting Rilea's remittance, was only doing what it was entitled to do pursuant to a final court adjudication. That adjudication stands. Rilea owed the money to the State; the defendants owe no money to Rilea.

In addition, defendants Lorenzen, Lowe, Trombino and DOT never received any money from Rilea. The fine and related sums were paid to the State as court debt. Nor did Rilea's payment of his speeding ticket spur MCSAP monies coming from the federal government to Iowa at Rilea's expense. Plus, as a matter of law, payment of the statutory fine by a law

violator is not an "unjust" enrichment. Indeed, given the fact Rilea committed the offense, he sustained no recoverable damages.

Finally, Iowa has not waived its sovereign immunity to permit an unjust enrichment claim under these circumstances. The issuance of a citation does not create an implied contract between the State and the offender. There is no waiver of sovereign immunity to allow Rilea to bring this suit which would conflict with his statutory obligation to remit the sums the law compelled once he was convicted in court. Rilea's charge of wrongdoing on the part of DOT officials placed his claim within the metes and bounds of Iowa Code chapter 669. Rilea never exhausted his administrative remedy to pursue such a claim before bringing suit. Plus, had he done so the claim would have been exempted under the chapter 669 provisions anyway. Sovereign immunity has not been waived to permit Rilea to proceed in this fashion.

Therefore, the summary judgment awarded by Judge Nelmark in the defendants' favor should be affirmed for any one or more of the reasons set forth above or, alternatively, the case should be ordered dismissed.

REQUEST FOR ORAL ARGUMENT

The defendants request to be heard in oral argument.

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this Brief contains 13,337 words, as allowed by Court order, excluding the parts of the Brief exempted by Iowa R. App. p. 6.903(1)(g)(1).

This Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in size 14 Times New Roman.

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CERTIFICATE OF FILING AND CERTIFICATE OF SERVICE

We, David S. Gorham and Robin G. Formaker, hereby certify that on September 24, 2020, a copy of Appellees' Brief was filed electronically with the Clerk of the Iowa Supreme Court through the EDMS system, and which system further will provide access and service to the brief on that same date to:

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