IN THE SUPREME COURT OF IOWA
Supreme Court No. 19-1857

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KHA LEN RICHARD PRICE WILLIAMS
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE LAWRENCE P. MCLELLAN AND SAMANTHA GRONEWALD, JUDGES

APPELLEE'S BRIEF

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ROUTING STATEMENT

Williams requests retention to consider whether under the Iowa Constitution "reasonable and articulable suspicion" of criminal activity or that a person is armed and presently dangerous should be required before a passenger in a vehicle stopped for traffic violations may be ordered to exit the vehicle and immediately patted down. *Contrast Maryland v. Wilson,* 519 U.S. 408, 414-15 (1997) *and State v. Smith,* 683 N.W.2d 542, 545-46 (Iowa 2004) *with State v. Becker,* 458 N.W.2d 604, 607-08 (Iowa 1990). Because Williams did not argue for a departure or change under the state constitution below existing principles of search and seizure should control. Transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

The defendant, Kha Len Price Williams, appeals from the district court's entry of judgment and sentence after finding him guilty of being a felon in possession of a firearm, a class D felony, following a stipulated trial on the minutes and additional minutes of testimony. *See* Iowa Code § 724.26. On appeal the defendant argues that the district court erred in overruling his motion to suppress evidence seized from his person following an officer's order to exit a

Lyft ride-share vehicle in which he was a passenger followed by an immediate weapons pat-down.

Course of Proceedings

The State accepts the defendant's summary of the proceedings below. Iowa R. App. P. 6.903(3).

Facts

Around 11:30 p.m. on February 14, 2019, Des Moines Officer Brian Buck stopped a vehicle being driven by a Lyft driver after observing several traffic violations. Suppr. Tr.p.5, line 9-p.6, line 9, p.12, line 22-p.13, line 2; Exh.1 (4:00-5:30)[1]. The driver complied with the officer's request for license and insurance information after being advised of the traffic violations. Tr.p.6, lines 10-12; Exh.1 (5:45-6:15). While Officer Buck was speaking with the driver and Williams, Officer Brandon Holtan arrived and moved to stand outside the rear passenger side of the vehicle where he could see and speak to defendant Williams who was the backseat passenger. Tr.p.6, lines 10-14, p.22, lines 15-23; Exh.2 (00:00-1:00). After obtaining the driver's information, Officer Buck asked Williams for his name, birthdate, and the last four digits of his social security number; Williams verbally

[1] Time citations from exhibits 1 and 2 are approximate.

responded and handed over his I.D. Tr.p.6, lines 10-14; Exh.1 (6:20-7:30). Buck then returned to his squad car to check for license status and warrants. Tr.p.6, lines 15-25; Exh.1 (6:20-7:30).

Officer Holtan overheard Williams' name and recognized Williams from a personal encounter in December of 2017 involving a vehicle and foot pursuit, following which Williams was charged with and pled guilty to eluding and carrying weapons. Suppr. Tr.p.22, line 15-p.23, line 2, p.24, line 9-p.25, line 6, p.38, line 14-p.39, line 8. Officer Holtan was also aware that Officer Briggs had arrested Williams for eluding in November of 2018 and asked Williams about that recent arrest. Tr.p.23, lines 3-6, p.31, line 25-p.32, line 3, p.25, lines 7-17, p.40, line 25-p.41, line 11. Because the first minute of Holtan's body cam video has no audio Williams' answers to Holtan's questions about his recent arrests cannot be heard. Tr.p.23, lines 7-15, p.29, lines 10-22, p.33, lines 17-19; Exh.2 (00:00-1:00).

Holtan further testified during that first minute he had also asked Williams if he had a firearm on his person; Williams broke eye contact and began to "overexplain" stating "I'm just a passenger," the driver was speeding, and volunteering he was going to see his child while offering his cell phone to the officer. Suppr. Tr.p.23, lines 7-15,

p.25, lines 14-20, p.33, lines 20-23, p.34, line 17-p.35, line 7, p.39, line 22-p.40, line 16; Exh.2 (00:00-1:20). Holtan described Williams' demeanor when he asked about a firearm as "freezing in time" going from friendly to considering between a "fight or flight response." Tr.p.23, lines 16-22, p.25, line 18-p.26, line 13, p.34, line 17-p.35, line 3.

Next, Officer Holtan asked Williams to step out of the vehicle intending to do a pat-down for weapons while drawing his weapon, instructing Williams not "to reach," and waving Officer Buck back over. Suppr. Tr.p.7, lines 12-20, p.23, line 16-p.24, line 3, p.34, line 4-p.35, line 1; Exh.1 (8:50-9:05); Exh.2 (1:30-2:05); *see also* Additional Minutes p.4 (8/26/19); Conf.App. 12. Holtan explained to Buck that he had arrested Williams for carrying weapons in the past, prompting Buck to grab Williams' right arm asking if he had a firearm on him while handcuffing him. Tr.p.8, line 20-p.9, line 1, p.27, lines 2-10; Exh.1 (9:10-9:30); Exh.2 (2:10-2:20). Williams admitted to having a gun in his left front jacket pocket, and Buck retrieved a loaded Taurus 9 mm handgun during the pat-down. Tr.p.9, lines 2-3,12-25, p.27, lines 2-10; Exh.1 (9:10-10:10); Exh.2 (2:10-3:20).

A full search of Williams' person and the backseat area of the Lyft vehicle was performed, and Williams was arrested and placed in Holtan's squad car. Tr.p.28, lines 3-11; Exh.2 (3:15-5:30). During a later conversation between Holtan and Williams, Holtan mentioned that he was the officer who had previously arrested Williams for carrying weapons and had asked him to step out because he did not want to get shot. Exh.2 (39:45-40:15).

Additional relevant facts will be discussed as part of the State's argument.

ARGUMENT

I. The District Court Correctly Overruled the Defendant's Motion to Suppress Finding the Officer's Exit Order and Weapons Pat-Down Supported by Officer Safety Concerns, His Personal Experience with the Defendant, and His Observations. Even Under the Proposed Reasonable Suspicion Standard, the Circumstances Supported the Officer's Actions.

Preservation of Error

Defendant Williams unsuccessfully moved to suppress evidence seized from his person following the officer's exit order and weapons pat-down arguing the officer lacked a valid basis for his seizure and pat-down search of his person. Motion to Suppress (5/10/19); Resistance (5/15/19); Order RE: Motion to Suppress (8/18/19); App. 10-28. While Williams generally cited to both the state and federal

constitutions, he did not argue for more protection or adoption of a different standard under the Iowa Constitution. *See generally* Motion to Suppress; App. 10-14; Suppr. Tr.pp.46-55; *see also State v. Effler*, 769 N.W.2d 880, 895 (Iowa 2009) (Appel, J., specially concurring, noting court's reluctance to consider independent state constitutional ground "on mere citation to the applicable state constitutional provision"). Nor did the district court separately address case law under the Iowa Constitution focusing only on federal authority. Order pp.5-6; App. 23-24.

Standards for Review

The Court's review of the district court's suppression ruling is *de novo*. *State v. Baker,* 925 N.W.2d 602, 609 (Iowa 2019); *State v. Kooima,* 833 N.W.2d 202, 205 (Iowa 2013); *State v. Watts,* 801 N.W.2d 845, 850 (Iowa 2011); *State v. Smith,* 683 N.W.2d 542, 544 (Iowa 2004). The Court makes "an independent evaluation of the totality of the circumstances as shown by the entire record." *Watts,* 801 N.W.2d at 850; *see also Baker,* 925 N.W.2d at 609. The Court considers the unique circumstances, including evidence from the suppression hearing and the trial. *State v. Gaskins,* 866 N.W.2d 1, 5 (Iowa 2015); *State v. Kurth*, 813 N.W.2d 270, 277 (Iowa 2012); *State*

v. Kreps, 650 N.W.2d 636, 640 (Iowa 2002). The Court gives deference to the factual findings of the district court but is not bound by those findings. *Baker,* 925 N.W.2d at 609; *Kreps,* 650 N.W.2d at 640.

The Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution protect against unreasonable searches and seizures. *Baker,* 925 N.W.2d at 610; *Kooima,* 833 N.W.2d at 206; W*atts,* 801 N.W.2d at 850. "The purpose of this protection is to safeguard the privacy and security of individuals against arbitrary intrusion by government officials." *State v. Crawford,* 659 N.W.2d 537, 541 (Iowa 2003) (citation omitted); *accord State v. Coleman,* 890 N.W.2d 284, 300 (Iowa 2017). The Court, however, recognizes while "officer safety is a legitimate and weighty interest in the context of traffic stops" there must be more than "generalized, unsubstantiated claims relating to officer safety . . . ." *Coleman,* 890 N.W.2d at 300-01 (citing *Pennsylvania v. Mimms,* 434 U.S. 106, 110 (1977)); *see also Michigan v. Long,* 463 U.S. 1032, 1047 (1983).

In *Smith*, this Court reaffirmed that officers are permitted to request a passenger's identification information as part of a stop for

traffic violations. *Smith,* 683 N.W.2d at 545-46; *see also State v. Riley,* 501 N.W.2d 487, 488-89 (Iowa 1993). Yet, officers may not "extend the duration of an automobile stop when the underlying problem has been resolved." *Coleman,* 890 N.W.2d at 301. To go further, a pat down or frisk of a person's outer clothing is permitted "if there is a reasonable suspicion that a person is armed and the officer's safety is in danger." *State v. Bergmann,* 633 N.W.2d 328, 333 (Iowa 2001) (citing *Terry v. Ohio,* 392 U.S. 1, 27, 30-31 (1968)). Such an analysis is fact-specific. *Coleman,* 890 N.W.2d at 300-01.

Merits

Defendant Williams argues that the district court erred in overruling his motion to suppress evidence because he alleges the officers "did not suspect him of being engaged in criminal activity" or that he was "armed and presently dangerous," and they subjected him "to custodial interrogation without first providing *Miranda* warnings." Appellant's Brief pp.19-31, 69-81. In addition, Williams invites the Court to adopt a reasonable suspicion standard under article I, section 8 of the Iowa Constitution, as several states have adopted more stringent standards under their state constitutions, before a police officer may lawfully order a passenger to exit a vehicle

stopped for traffic violations. *Id.* at pp.42-68. Specifically, he urges in light of this Court's recent expansions of protections from warrantless searches and seizures under the Iowa Constitution it should decline to follow *Maryland v. Wilson*, 519 U.S. 408 (1997), and return to the earlier standard applied in *State v. Becker,* 458 N.W.2d 604 (Iowa 1990) (some articulable suspicion of wrongdoing), *abrogated on other grounds by Knowles v. Iowa,* 525 U.S. 113, 117-18 (1998). *Id.*

The State disagrees that the adoption of a one-size-fits-all standard is warranted in this case or moving forward. *Coleman,* 890 N.W.2d at 300-01 ("There is no categorial approach to pat-down searches," rather "[t]he validity of a pat-down search . . . depends upon the facts of each case."). In any regard, even applying Williams' proposed reasonable suspicion standard, the officer's exit order and weapons pat-down were lawful based on his personal experience with Williams and then existing circumstances.

A. Additional Authorities—Passenger Exit Orders and Weapons Pat-Downs.

1. Federal Cases.

In *Pennsylvania v. Mimms* the United States Supreme Court noted that "[t]he touchstone of our analysis under the Fourth

Amendment is always 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'" *Mimms,* 434 U.S. at 108-09 (quoting *Terry v. Ohio,* 392 U.S. 1, 19 (1968)). In *Terry* the Court held that "it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties." *Mimms*, 434 U.S. at 110 (quoting *Terry*, 392 U.S. at 23). Thus, the Court found the officer's exit order for a driver following a traffic violation stop reasonable along with the pat-down that followed based on observing a large bulge under the driver's jacket. *Mimms,* 434 U.S. at 109-12.

Twenty years later, the Supreme Court extended the *Mimms* rule to passengers in vehicles stopped for traffic violations, noting "the same weighty interest in officer safety is present regardless of whether the occupant of the stopped car is a driver or passenger." *Wilson,* 519 U.S. at 413-15. The Court found the "additional intrusion on the passenger minimal" upholding the officer's exit order for passengers "pending completion of the stop." *Id.* at 414-15. Yet, pat-down searches of a driver or any passenger should be based on a "reasonable suspicion that they may be armed and dangerous." *Knowles,* 525 U.S. at 117-18 (finding full vehicle search incident to

traffic citation unreasonable); *see also Arizona v. Johnson,* 555 U.S. 323, 332-33 (2009).

More recently, in *Johnson* the Court held that the reasonableness of a temporary seizure of a driver and passengers continues "for the duration of the stop," and inquiries into unrelated matters are permitted so long as they "do not measurably extend the duration of the stop." *Johnson,* 555 U.S. at 333 (citation omitted); *see also In re Property Seized from Pardee*, 872 N.W.2d 384, 393 (Iowa 2015). The Court found the pat-down of passenger Johnson who was suspected of carrying a weapon was supported by the circumstances. *Johnson,* 555 U.S. at 330-33.

2. Iowa Cases.

In *State v. Becker,* decided after *Mimms* but before *Wilson,* this Court held that immediately ordering a passenger from a vehicle following a traffic stop was unjustified "unless some articulable suspicion exists concerning a violation of law by that person, or unless further interference with the passenger is required to facilitate a lawful arrest of another person or lawful search of the vehicle." *Becker,* 458 N.W.2d 604, 607 (Iowa 1990). The Court declined to

extend the *Mimms* rule concerning drivers to passengers. *Id.* at 607-08.

Three years later in *State v. Riley,* the Court found it permissible for an officer to talk to a passenger in a stopped vehicle and ask for identification. *Riley,* 501 N.W.2d 487, 488-89 (Iowa 1993). Furtive movements under the front seat by the passenger upon the officer's approach and his failure to provide identification reasonably supported the officer's exit order and check under the front seat for a weapon. *Id.* at 489-90.

Later in *State v. Bergmann*, the Court upheld an officer's exit order for the driver, weapons pat-down, check under the driver's seat, and detention for a dog sniff based on a number of facts, including observation of a meeting with a known drug dealer in an area of drug activity and his prior arrest for possession of marijuana and a handgun. *Bergmann,* 633 N.W.2d 328, 330-31, 333-34 (Iowa 2001). The Court reaffirmed pat-downs are allowed when an officer has reasonable suspicion of criminal activity or believes "the person is armed and the officer's safety is in danger." *Id.* at 333 (citing *Terry,* 392 U.S. at 27, 30-31).

In *State v. Smith* the Court noted that in *Wilson* the Supreme Court had "overruled *Becker* sub silentio as far as its reliance on the Fourth Amendment," and reaffirmed *Riley* in that officers may lawfully talk to a passenger in a stopped vehicle and request identification information. *Smith,* 683 N.W.2d 542, 545 (Iowa 2004); *see also State v. Finch*, No. 02-1148, 2003 WL 22828750, *4 (Iowa Ct. App. Nov. 26, 2003) (applying *Wilson* to instance where officer ordered passenger to remain with car). This Court also found Smith was not in fact "seized" beyond issuance of the citation. *Smith*, 683 N.W.2d at 545-46.

More recently, in *Coleman* the Court surveyed federal caselaw under the Fourth Amendment, Iowa caselaw, and decisions under the Iowa Constitution. *Coleman,* 890 N.W.2d at 288-300. The Court expressed concern over preventing the "arbitrary use of police power" calling for more than "generalized, unsubstantiated claims relating to officer safety as a basis for extending a traffic stop." *Id.* at 299-301. The Court again held that "a more intrusive *Terry*-type stop" must be supported by reasonable suspicion and that "the duration of an automobile stop" may not be extended beyond resolution of the underlying purpose. *Id.* at 300-01; *see also State v. Schable,* No.17-

0688, 2018 WL 2725314, at *3-*5 (Iowa Ct. App. June 6, 2018) (finding no justification for the immediate exit order and pat-down of a passenger in a parked car with an impaired driver).

3. Other States.

In support of his argument for additional constitutional protections for automobile passengers against officer exit order and pat-downs, Williams points to several states that have declined to follow *Mimms* and/or *Wilson* under their respective state constitutions. Appellant's Brief pp.48-61. Those states include Hawaii, New Jersey, Washington, Massachusetts, Vermont, and Minnesota. *Id.*

Back in 1984, the Hawaii Supreme Court upheld an officer's exit order and sobriety testing of a stopped driver under the Fourth Amendment and article I, section 7 of the Hawaii Constitution. *State v. Wyatt,* 687 P.2d 544, 552-553 (Haw. 1984). The court declined to expressly adopt the *Mimms* rule. *Id.* at 552 n.9. But the following year, the court held that it would not adopt the *Mimms* standard instead holding that a police officer must have a "reasonable basis of specific articulable facts to believe a crime has been committed to order a driver out of a car after a traffic stop." *State v. Kim,* 711 P.2d

1291, 1292-95 (Haw. 1985). Nor has that court followed the *Wilson* rule as to passengers.

Similarly, in New Jersey the supreme court has refused to extend the *Mimms* rule to passengers holding that "an officer must be able to point to specific and articulable facts that would warrant heightened caution to justify ordering the occupants to step out of a vehicle detained for a traffic violation." *State v. Smith,* 637 A.2d 158, 167 (N.J. 1994) (focusing on article I, paragraph 7 of the New Jersey Constitution). Notably, the court described the standard as lower than what is required to justify a *Terry* protective pat-down—whether considering "the totality of the circumstances" an officer can point to facts "that would create in a police officer a heightened awareness of danger that would warrant an objectively reasonable officer in securing the scene in a more effective manner by ordering the passenger to alight from the car." *Id.* More than ten years later, the New Jersey court reaffirmed *Smith's* "heightened caution" standard for removal of passengers. *State v. Bacome,* 154 A.2d 1253, 1258-60 (N.J. 2017).

The Washington Supreme Court declined to adopt the *Wilson* rule for passenger exit orders under article I, section 7 of the

Washington Constitution instead requiring an officer "to be able to articulate an objective rationale predicated specifically on safety concerns" to justify an order to stay or exit the vehicle. *State v. Mendez,* 970 P.2d 722, 726-728 (Wash. 1999). Such a standard "prevents groundless police intrusions on passenger privacy." *Id.* at 728. The court noted the "objective rationale" is a bar lower than "*Terry's* standard of reasonable suspicion of criminal activity." *Id.* The State points out that the text of the analogous provision in the Washington Constitution differs in that it "recognizes an individual's right to privacy with *no* express limitations."[2] *See State v. Ferrier*, 960 P.2d 927, 930 (Wash. 1998) (quoting *State v. Young*, 867 P.3d 593, 596 (Wash. 1994)).

In Massachusetts, the court has declined to adopt either *Mimms* or *Wilson* under article 14 of the Declaration of Rights of the Massachusetts Constitution. *Commonwealth v. Gonsalves,* 711 N.E.2d 108, 110-12, 115 (Mass. 1999). The court found such rules to be "a clear invitation to discriminatory enforcement" that would "invite random and unequal treatment of motorists." *Id.* at 112-13.

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[2] *See State v. Storm*, 898 N.W.2d 140, 153 (Iowa 2017) (rejecting calls to adopt Washington's approach under Iowa Constitution because "[t]he Iowa Constitution lacks a separate privacy provision").

Instead of those bright-line rules, there must be "some objective circumstances making it reasonable to issue an exit order to the driver or passengers in a stopped vehicle." *Id.* at 114.

The Vermont Supreme Court has held that under chapter I, article 11 of the Vermont Constitution there must be "a minimal level of objective justification for a police officer to order a driver from his or her vehicle . . . ." *State v. Sprague,* 824 A.2d 539, 545 (Vt. 2003). Such a standard "strikes the proper balance . . . between the need to ensure the officer's safety and the constitutional imperative of requiring individualized, accountable decisionmaking for every governmental intrusion upon personal liberties." *Id.* at 545-46.

The Minnesota Supreme Court has held that under article I, section 10 of the Minnesota Constitution an officer must have a "reasonable, articulable suspicion" to warrant exploiting a routine traffic stop to obtain a "consent-based search" and exceeding the scope of the underlying stop without informing the passenger of his right to refuse. *State v. Fort,* 660 N.W.2d 415, 416 (Minn. 2003). The court noted the officer's questions were "particularly intrusive" and investigatory "aimed at soliciting evidence of drugs and weapons." *Id.* at 418.

However, depending on how the question is framed, many jurisdictions would still allow an officer discretion to ask a passenger to either get out of or remain with a stopped vehicle.[3] *See, e.g.*, *State v. Robbins*, 171 A.3d 1245, 1250-51 (N.H. 2017); *State v. Donaldson*, 380 S.W.3d 86, 91–96 & n.10 (Tenn. 2012) (analyzing *Mimms*, adopting its view of balancing of interests, and explaining that Tennessee Constitution sometimes "offers more protection than the corresponding provisions of the Fourth Amendment"—but stating that "[i]n this instance, we see no reason to construe our constitution in a manner different from the federal constitution"); *State v. Ulrey*, 208 P.3d 317, 322 (Kan. 2009); *Owens v. Commonwealth*, 291 S.W.3d 704, 708-09 (Ky. 2009); *State v. Askerooth*, 681 N.W.2d 353, 367 (Minn. 2004) (analyzing traffic stop under Article I, Section 10 of the Minnesota Constitution, and noting that "[i]t is correct that a police officer may order a driver out of a lawfully stopped vehicle without an articulated reason"); *State v. Sparr*, 688 N.W.2d 913, 921-22 (Neb. 2004); *State v. McKinnon-Andrews*, 846 A.2d 1198, 1204-

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[3] *See also* George L. Blum, *Construction and Application by State Courts of Federal and State Constitutional Standards Governing Police Orders to Passengers in Car Lawfully Pulled Over for Traffic Stop*, 92 A.L.R.6th 171 (orig. pub'd 2014) (compiling cases).

05 (N.H. 2004); *State v. O'Neill*, 62 P.3d 489, 499 (Wash. 2003) (assessing seizure under Article I, Section 7 of Washington Constitution and stating that "[o]nce a driver has been validly stopped, a police officer may order him or her to get out of the vehicle" in every case because "[s]uch an intrusion is de minimis"); *People v. Rutherford*, 802 N.E.2d 340, 349 (Ill. 2003); *State v. Robinette*, 685 N.E.2d 762, 767 (Ohio 1997) (reanalyzing facts under Section 14, Article I of the Ohio Constitution on remand, but still holding police officer's "instruction for Robinette to exit the vehicle was also justified because it was a traffic stop"); *Smith*, 637 A.2d 1 at 162–64 (determining that *Mimms* rationale "satisfies the New Jersey Constitution as well."); *State v. Dukes*, 547 A.2d 10, 22–23 (Conn. 1988) (noting, under Article I, Section 7 of the Connecticut Constitution, an officer conducting a traffic stop may "ask that an occupant exit the vehicle; any intrusion upon an occupant's personal liberty in directing that action is de minimis because, on balance, it serves to protect the officer").

B. New Constitutional Rule Unwarranted.

The Court should decline Williams' invitation to adopt a bright-line rule under article I, section 8 of the Iowa Constitution to require

an officer to have a reasonable suspicion of specific criminal activity by an automobile passenger or that the person is armed and presently dangerous to support a vehicle exit order. Such a rule is not feasible in practice when split second decisions as to present danger must be made and, in any regard, is unwarranted because existing standards have not been applied as *per se* rules without regard to the circumstances. *Coleman,* 890 N.W.2d at 301 (noting validity of a pat-down search is a key to ensuring officer safety and "depends upon the facts of each case"); *Commonwealth v. Elysee*, 934 N.E.2d 837, 840-41 (Mass. 2010) (the officer "need not point to specific facts that the occupants are armed and dangerous."); *Gonsalves*, 711 N.E.2d at 112-13 ("[I]t does not take much" to trigger safety concerns); *Smith,* 637 A.2d at 168 (noting "sometimes in a matter of seconds, an officer must determine whether a protective pat-down is necessary to secure his or her safety") (citations omitted); *Riley,* 501 N.W.2d at 490 (recognizing dangers in roadside encounters).

In *Wilson,* for example, the Supreme Court noted the officer's observations of one passenger's movements and visible nervousness supported the exit order. *Wilson,* 519 U.S. at 410-11. In *Johnson* the

Court maintained that the *Terry* reasonable suspicion standard must be satisfied to support a pat-down. *Johnson,* 555 U.S. at 330-32.

Williams urges a return to the standard articulated by this Court in *Becker*, 458 N.W.2d at 604, is necessary to avoid arbitrary and discriminatory law enforcement. The State disagrees. The problem in *Becker* was the officer's *immediate* exit order without any basis to suspect the passenger of wrongdoing or of presenting a danger to the officer. *Becker,* 458 N.W.2d at 606-08. That is not the situation in this case given the officer's personal history with and knowledge of Wilson.

Since *Wilson* was decided, this Court has not upheld passenger exit orders that are without any factual support. *Baker,* 925 N.W.2d at 611 (stop and seizure backed by "specific and articulable facts"); *Coleman,* 890 N.W.2d at 300-01 (finding no safety concern supported officer's extension of duration of traffic stop beyond time to satisfy underlying purpose); *Bergmann,* 633 N.W.2d at 330-31, 333-34 (upholding stop and pat-down based on specific suspicions of drug activity and weapons possession); *Riley,* 501 N.W.2d at 488-90 (passenger's failure to provide identification and furtive movements supported removal and weapons check); *Schable,* 2018 WL 2725314,

at *3-*5 (finding removal and pat-down of passenger in parked vehicle with impaired driver unsupported).

States departing from the standards applied in *Wilson* and/or *Mimms* under their state constitutions have not created standards that differ significantly from those Iowa appellate courts have in practice followed. Several of those states require that officers have a "reasonable basis of specific articulable facts" or an "objective rationale predicated on specific safety concerns. *Fort,* 660 N.W.2d at 416-19 ("articulable suspicion" for consent-based search); *Gonsalves,* 711 N.E.2d at 661-66 (specific and articulable facts to support exit order); *Mendez,* 970 P.2d at 728 ("objective rationale" to support stay order); *Kim,* 711 P.2d at 1294 ("reasonable basis" to believe involvement in criminal activity).

Other states describe chosen standards as a showing of "heightened caution" to support passenger removal or a "minimum level of objective justification" to support officer stated safety concerns. *Bacome,* 154 A.3d at 1258-60; *Sprague,* 824 A.2d at 545-46. The New Jersey court describes the "heightened caution" standard as more stringent than the *Mimms* rule but lower than required to support a *Terry* pat-down. *Smith,* 637 A.2d at 167-68. All

states, including Iowa, continue to apply the well-established *Terry* stop and frisk standards for weapons pat-downs. *Coleman,* 890 N.W.2d at 300-01.

The Court should therefore conclude that adoption of a new rule under the Iowa Constitution pertaining to the treatment of passengers in vehicles stopped for traffic violations is unwarranted.

C. Reasonable Suspicion Standard Satisfied.

In any regard, even applying the proposed reasonable suspicion standard to Williams' case, the circumstances and known criminal history supported the officers' actions in this case. The record reflects Officer Holtan's reasonable belief Williams was armed and presently dangerous warranting both the exit order and immediate weapons pat-down. Order pp.5-6 (8/18/19); App. 23-24. The Court should affirm the denial of Williams' motion to suppress.

First, it was lawful for Officer Buck to ask Williams for his identification information. *Smith,* 683 N.W.2d at 544-49; *Riley,* 501 N.W.2d at 488-89. Second, there was no unlawful extension of the duration of the traffic stop because Officer Buck had not yet completed his warrants check of the Lyft driver and passenger Williams when he saw Officer Holtan draw his gun and wave him up.

Suppr. Tr.p.8, lines 11-19; Exh.1 (7:30-8:50); *Coleman,* 890 N.W.2d at 299-301.

Officer Holtan recognized Williams by name based on an incident from early December of 2017 when Holtan had pursued Williams first in a vehicle then on foot and he was found in possession of a firearm. Suppr. Tr.p.22, line 15-p.23, line 2, p.24, line 9-p.25, line 6, p.38, line 14-p.39, line 8; Exh.2 (39:40-40:15); Order p.4; App. 22. In that case, Williams pled guilty to felony eluding and carrying weapons, and was given a deferred judgment and placed on probation for two years. *See* Order (9/05/18) (FECR311978); App.---; Minutes p.1; Additional Minutes (probation order) p.6 (8/26/19); Conf.App. 5-6. Holtan was also aware another officer had arrested Williams for eluding in November of 2018, just a few months earlier. Suppr. Tr.p.23, lines 3-6, p.25, lines 7-17, p.31, line 25-p.32, line 3, p.40, line 25-p.41, line 11; Order p.4; App. 22. Before the audio on Holtan's body cam recorder Holtan started and the back window came down, Holtan asked Williams about the recent charge and asked about having a firearm. Suppr. Tr.p.23, lines 7-15, p.25, lines 14-22, p.31, lines 15-18, p.33, lines 20-23, p.34, line 17-p.35, line 7; Order

p.2; App. 20. Williams' hands remain visible holding his cell phone out in front of his body. Exh.2 (00:00-1:00).

As their brief conversation continues, Williams responded that he was "just a passenger," he had noticed the Lyft driver was speeding, and that he was going to visit his child offering his phone to Holtan. Exh.2 (1:00-1:30); Order p.2; App. 20. But when Holtan asked Williams "to step out for me real quick," he said Williams "broke eye contact" and his demeanor changed, which Holtan interpreted as "freezing" in a "fight or flight response." Suppr. Tr.p.23, lines 16-22, p.25, line 18-p.26, line 13, p.34, line 17-p.35, line 3; Order p.3; App. 21; Additional Minutes (officer reports) (8/26/19); Conf.App. 7-12. Williams' reaction prompted Holtan to again ask Williams to "step out" instructing him "don't reach" and to put his hands up while drawing his own weapon. Suppr. Tr.p.23, line 16-p.24, line 3; Exh.2 (1:14-1:45); Exh.1 (8:50-9:00). Williams responded that he was putting his phone away. Tr.p.35, lines 5-7; Exh.2 (1:02-1:45).

Next, Officer Buck rushed up as the back door opened and Williams stepped out with his hands up. Suppr. Tr.p.7, lines 12-20, p.8, lines 20-25, p.23, line 23-p.24, line 3; Exh.1 (8:45-9:10). Buck

asked Williams if he had a gun on him as Buck grabbed Williams' right arm. Suppr. Tr.p.8, line 20-p.9, line 3, p.27, lines 2-10,18-24; Exh.1 (9:10-9:30); Exh.2 (1:55-2:25). Williams said yes and indicated it was in his left front coat pocket. Suppr.Tr.p.8, line 20-p.9, line 3, p.27, lines 2-10; Exh.1 (9:00-9:40); Exh.2 (2:15-2:35). During the pat-down a loaded Taurus 9 mm handgun was located and Williams admitted he did not have a permit. Exh.1 (9:10-9:40); Exh.2 (2:15-2:40).

Officer Holtan testified that based on Williams' efforts to "overexplain," the change in Williams' demeanor when asked to step out, his personal history with Williams, and his knowledge of Williams' recent arrest, Holtan "felt he was armed" and intended to conduct a weapons pat-down because he did not "want to get shot." Suppr. Tr.p.26, lines 6-13, p.27, line 25-p.28, line 7; Exh.2 (39:45-40:15). Relying on *Wilson* and the factual record, the district court correctly found that it was reasonable for Officer Holtan "to believe that defendant may be armed and dangerous based on his previous encounters with the defendant and his action of moving his hand(s) toward his pocket" when ordered to exit the vehicle. Order p.6; App. 24; *see Bergmann,* 633 N.W.2d at 330-31 (noting officer recognized

suspect from a prior arrest involving weapons and drugs supporting expressed safety concerns).

To the extent Williams also challenges the district court's reliance on Williams' admission to having a gun on his person as he is being handcuffed on the grounds it was obtained through unlawful custodial interrogation, the State notes the video does not clearly show whether his admission to possession of a firearm was prior to or at the same time as the pat-down that Holtan said would have occurred regardless of his answer. Appellant's Brief pp.76-81; *see* Order p.6; App. 24; Suppr. Tr.p.9, lines 4-9, p.27, line 25-p.28, line 7; Exh.1 (8:50-9:45); Exh.2 (2:05-2:40). Thus, the State does not separately rely on Williams' admission in support of the weapons pat-down.

Considering the totality of the circumstances detailed above, Officer Holtan's actions in ordering Williams out of the vehicle were supported under any of the proposed standards--reasonable suspicion, objective rationale, or heightened caution. *See, e.g., Smith*, 637 A.2d at 167; *Sprague*, 824 A.2d at 545-46. The same circumstances support the immediate weapons pat-down that followed upon Williams' exit. Notably, Officer Holtan was personally

involved in Williams' 2017 arrest leading to his 2018 convictions for felony eluding and carrying weapons; thus, Holtan knew as a convicted felon it was not legal for Williams to possess a firearm, he was on probation, and that Williams had recently been arrested on another eluding charge. Iowa Code § 724.26. For those reasons, Williams discussion of expanding gun rights laws is simply not relevant in this case.[4] Appellant's Brief pp.65-68. Nor is his argument that mere possession of a firearm should not automatically support an officer's claim an armed suspect must be considered or treated as dangerous routinely supporting a *Terry* pat-down. Appellant's Brief pp.67-68. That is not the case before this Court—Williams was known for his efforts to flee from police and illegal possession of a firearm and additional observations made by Officer Holton supported his safety concerns and suspicions. Moreover, the present record does not give rise to concerns of arbitrary law enforcement or racial profiling.

[4] Persons who are not convicted felons are still required to have a valid permit while carrying or transporting a firearm. Iowa Code §§ 724.4(4)(i), 724.5.

Therefore, the Court should affirm the denial of defendant Williams' motion to suppress upholding the officer's exit order and immediate weapons pat-down search.

CONCLUSION

For the reasons argued above, the State respectfully requests that this Court affirm the conviction and sentence of defendant Kha Len Price Williams.

REQUEST FOR NONORAL SUBMISSION

Appellant has requested oral argument on his challenge to the district court's suppression ruling. The State does not believe oral argument would be of material assistance in resolving the asserted constitutional challenge. Should the Court order oral argument, the State would request to also be heard.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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