IN THE SUPREME COURT OF IOWA
Supreme Court No. 20–1300

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MYRANDA MARIE RINCON,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HON. SAMANTHA GRONEWALD, JUDGE

APPELLEE'S BRIEF

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ROUTING STATEMENT

Rincon requests retention. *See* Def's Br. at 17–18. But this case does not really implicate the novel challenge that Rincon is raising. Rincon was detained when she was a passenger in a stolen vehicle, which also contained open containers of alcohol and baggies of what appeared to be methamphetamine, in plain view. Her backpack was within the scope of the search under the automobile exception. Also, before Rincon's backpack was opened, an officer had already noticed and seized a baggie of marijuana—it was hanging out of a front pocket, in plain view. Rincon was only convicted of possessing that plain-view marijuana, so the search of the interior of the backpack is irrelevant. Thus, there is no issue of first impression in this appeal—it can be resolved by applying established legal principles and settled law, and transfer to the Iowa Court of Appeals is appropriate. *See* Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case

This is Myranda Marie Rincon's direct appeal from her conviction for possessing marijuana (second offense), an aggravated misdemeanor, in violation of Iowa Code section 124.401(5) (2019).

Rincon moved to suppress the evidence, and the State resisted. The matter was submitted on the dash-cam and body-cam footage, together with written filings and briefing. Initially, the district court granted Rincon's motion to suppress. Then, the State filed a motion to reconsider that ruling. After hearing argument, the district court granted that motion to reconsider, reversed its prior ruling, and denied Rincon's motion to suppress. Rincon stipulated to a trial on the minutes on this particular charge; other charges were dismissed. The court found Rincon guilty. It sentenced Rincon to pay a $625 fine and serve an indeterminate two-year term of incarceration, then it suspended that sentence and placed Rincon on probation for a year. *See* Sentencing Order (10/8/20); App. 57.

In this appeal, Rincon challenges the ruling that granted the State's motion to reconsider and denied her motion to suppress. She argues that error is not preserved for the State to defend the ruling on any grounds that it did not raise in its motion to reconsider. She also defends the ruling that officers did not have probable cause to search her backpack (over the State's resistance, which argued that they did). Finally, she challenges the applicability of the plain-view exception and the automobile exception.

Statement of Facts

On December 24, 2019, Rincon was in the front passenger seat of a stolen vehicle that was parked on the side of a residential street in Des Moines. Des Moines Police Officer Cody Johnson was on patrol of the area. He ran the license plate and discovered that the vehicle had been reported as stolen. When Officer Johnson approached, he saw Clifton Melton exit from a nearby apartment building and walk toward the parked vehicle, making his way to the driver-side door. Officer Johnson got out of the car, approached Melton (whom he had recognized from prior interactions), and asked him if this was his car. Melton said "no." Officer Johnson prodded further and asked Melton whose car it was. Melton said that it belonged to his "homegirl," and he gestured towards the apartment building, from which he had just exited. Officer Johnson and his partner (Officer Jordan Ulin) placed Melton under arrest. *See* Def's Ex. A, 0:00–2:12.

Officer Johnson noticed that the vehicle's engine was running, and there were four unknown passengers inside. Rincon was in the front passenger seat; there were three other people in the backseat. Officer Johnson opened the driver-side door to shut off the car. He immediately noticed a half-full bottle of Hennessey in the driver's seat.

As that happened, Rincon was on her cell phone, trying to arrange a ride home—and as soon as Officer Johnson opened the car door, she asked him for the address of the nearby apartment building, so that she could tell someone where to pick her up. When Rincon remarked that she was "going home," Officer Johnson said: "I'll let you know in just a second." *See* Def's Ex. A, 2:12–2:30. This exchange followed:

> **RINCON**: . . . because I'm not being detained or nothing.
>
> **OFFICER JOHNSON**: Yes, you are being detained. This entire call's being detained.
>
> **RINCON**: For what?
>
> **OFFICER JOHNSON**: This car is stolen.
>
> **RINCON**: What?
>
> **OFFICER JOHNSON**: Yes. You got your ID on you?
>
> **RINCON**: Well, I'm not driving this car, so it's not —
>
> **OFFICER JOHNSON**: Well, here's the deal: you all need to produce an ID, okay? Because you're in a stolen car, and we're gonna figure out who everybody is.
>
> **RINCON**: [Crosstalk]
>
> **OFFICER JOHNSON**: And not only that, you got an open container sitting right there on the seat [points].
>
> **RINCON**: Okay, that's not mine.

Def's Ex. A, 2:25–3:00. After some resistance, Rincon provided her name and other identifying information, in lieu of an ID. Officer Ulin spoke with the passenger in the seat behind Rincon (who had an ID) and the passenger in the middle seat (who did not). *See* Def's Ex. A, 3:00–4:15. Officer Johnson started gathering identifying information

from the passenger in the seat behind the driver's seat, and he also noted that there was another open container in plain view (which he pointed out to the middle-seat passenger, who was complaining that the officers had no reason to detain them). *See* Def's Ex. A, 4:15–5:13. The minutes of testimony also stated that, during that conversation and before detaining any of the passengers, Officer Johnson noticed "two small plastic baggies" that contained a crystalline substance that looked like methamphetamine. They were in plain view, "inside the front driver's side door handle." *See* Minutes (2/3/20) at 1; C-App. 4.

Officer Johnson asked how they all knew each other, and he did not get a very clear answer. The middle-seat passenger asked if they could get out, because he was "cramped up." Officer Johnson replied: "Yeah, you guys can get out." The other officer was apparently talking with Rincon. He said: "Yeah, we're gonna get everybody out, okay?" *See* Def's Ex. A, 5:30–6:03. Officer Johnson was on the driver's side of the vehicle. He watched as the woman in the backseat on that side put items into her handbag and got out of the car, carrying that handbag. Officer Johnson pointed his flashlight towards the top of the trunk of the car and said: "You can set this up here"—referring to the handbag. The woman either did not understand him or chose not to comply.

Officer Johnson took hold of the strap of the handbag and placed the handbag on top of the car. *See* Def's Ex. A, 6:03–6:37.

Meanwhile, Officer Ulin opened the driver-side backseat door, to let one of the other passengers out of the car. Officer Ulin gave that male passenger a series of specific instructions to step out of the car and face towards the car, as he stepped out. The man complied, and Officer Ulin placed him in handcuffs. *See* Def's Ex. A, 6:03–6:30.

While that was happening, Rincon began to get out of the vehicle, carrying her backpack. That was when Officer Steinkamp arrived on the scene. *See* Def's Ex. B. When Rincon stood up and got out of the car, both Officer Ulin and Officer Steinkamp told her to get back into the vehicle (and to get off the phone). *See* Def's Ex. A, 6:30–6:37; Def's Ex. B, 1:20–1:35 ("Put yourself back in the car."). Rincon said that she misunderstood and started to get back in the car. But since she was already out of the car, Officer Steinkamp took Rincon by the arm with one hand, picked up her backpack off of the ground with his other hand, and walked back towards Officer Johnson's patrol vehicle. Officer Steinkamp placed her backpack on the hood of the vehicle, and then he placed Rincon in handcuffs. *See* State's Ex. 1 (Stream 0, Johnson's dashcam), 6:25–6:50; Def's Ex. B, 1:30–1:55.

Another officer looked at Rincon's backpack, without touching it—he pointed to a baggie that was hanging out of the front pocket and said: "You've got weed right there." *See* Def's Ex. B, 1:50–2:02; State's Ex. 1 (Stream 0, Johnson's dashcam), 6:50–7:00. About a minute later, that officer returned to extract the baggie from Rincon's backpack. He did not need to open or unzip the backpack—instead, he pinched the protruding body of that plastic baggie that he already identified as containing "weed," and he withdrew it from the backpack. *See* State's Ex. 1 (Stream 2, Johnson's dashcam, wide view), 7:50–8:02. It was readily identifiable as a rolled-up plastic baggie, full of marijuana. After that, the officer unzipped that front pocket of the backpack, searched it, and found a smaller baggie of methamphetamine. *See* State's Ex. 1 (Stream 2), 8:01–8:13; Minutes (2/3/20) at 2; C-App. 5.

Officer Ulin returned to the vehicle after placing the first male passenger into a patrol vehicle; he directed the last passenger to get out of the car, and placed him in handcuffs as well. At about that time, Officer Johnson informed the female backseat passenger that she was being detained, and he placed her in handcuffs, too. *See* Def's Ex. A, 6:37–7:15. At that point, all four of the passengers had been detained, outside the vehicle. *See* State's Ex. 1 (Stream 2), 8:10–8:20.

As Officer Steinkamp was walking over to the stolen vehicle, the other female passenger was asking what they were being detained for. Officer Johnson responded to her. Officer Steinkamp added to that response by pointing his flashlight at the open driver-side door and saying: "you've got dope right here in the door." Def's Ex. B, 2:03–2:27. Officer Johnson did not react to that with surprise; he did not turn his body to face Officer Steinkamp; nor did he ask what Officer Steinkamp was referring to. *See* Def's Ex. A, 7:25–7:35.

Rincon was arrested. One of the male passengers had a warrant for his arrest. The other male passenger was arrested because drugs were found in the vehicle, where he was sitting. The other female passenger was not arrested. *See* Minutes (2/3/20) at 2–3; C-App. 5–6.

Course of Proceedings

Rincon moved to suppress the evidence recovered from her backpack. She argued that her backpack "was searched without her consent, without probable cause, and not incident to arrest." *See* MTS (3/26/20); App. 16. The State responded that police could detain all passengers outside of the stolen vehicle, that contraband was seen in plain view, and that officers had probable cause to search the vehicle and all containers within it. *See* Resistance (3/30/20); App. 18.

Rincon filed a responsive brief. Her response to the State's argument about plain view was: "[T]he contraband in this case was contained within an opaque back pack. It was only after officers seized, opened, and went through it that they found bags of controlled substances." *See* MTS Brief (3/31/20) at 4; App. 30 (citing Def's Ex. A, 7:45). Rincon also cited *State v. Schrier*, 283 N.W.2d 338, 346 (Iowa 1979) but she distinguished that case on this basis:

> In that instance, a bag of marijuana was sticking out of the back pack, and therefore was, in fact, in plain view. The Court held this indicated a "certain nonchalance about the marijuana." *Id.* The Court held that this diminished the expectation of privacy. *Id.* This case is different. Rincon's bag was zipped and shut, and had to be opened to find the contraband.

MTS Brief (3/31/20) at 4–5; App. 30–31. Rincon also argued that the automobile exception did not enable police to search closed luggage inside of a vehicle, even with probable cause to believe that there was evidence or contraband that could be inside it. *See id.* at 5–6 (quoting *Arkansas v. Sanders*, 442 U.S. 753, 764–65 (1979), *overruled by California v. Acevedo*, 500 U.S. 565 (1991)). And Rincon argued that police did not have probable cause to believe that her backpack had contained any contraband, or that she knew about the open container and drugs in plain view in the vehicle. *See id.* at 6; App. 32.

The motion to suppress was submitted on written filings and the video footage. The district court initially granted suppression because it determined that police did not have probable cause to believe that Rincon committed a crime, and because the search of Rincon's backpack was not incident or contemporaneous to arrest. *See* MTS Ruling (4/15/20); App. 34. The State filed a motion to reconsider that ruling. *See* Motion to Reconsider (4/15/20); App. 40. After hearing arguments on the motion, the district court granted the motion to reconsider and denied the motion to suppress:

> Even if Rincon did have some expectation of privacy in the detained vehicle, such expectation may not survive if probable cause is given to believe the vehicle is transporting contraband. *United States v. Ross*, 456 U.S. 798, 823 (1982); *see also State v. Eubanks*, 355 N.W.2d 57 (Iowa 1984). Here, prior to the search of Rincon's backpack, law enforcement had probable cause to believe the detained vehicle was transporting contraband. Accordingly, Rincon had no expectation of privacy that would have precluded law enforcement from searching the containers within the detained vehicle, which included her backpack.

Ruling (6/16/20) at 1–2; App. 45–46. The State dismissed the charge related to methamphetamine. Rincon had a stipulated bench trial on the minutes of testimony; she was convicted of possessing marijuana. *See* Verdict (9/25/20); App. 53.

Additional facts will be discussed when relevant.

ARGUMENT

I. The district court did not err in granting the motion to reconsider and denying Rincon's motion to suppress.

Preservation of Error

Error is preserved for the State to defend this ruling on the actual grounds for the ruling, plus any grounds for the same result that were urged below. *See DeVoss v. State*, 648 N.W.2d 56, 60–63 (Iowa 2002). Rincon argues that error is not preserved for the State to defend the ruling on any grounds that were raised in its resistance, rejected in the original ruling that granted the motion to suppress, and then not renewed in its motion to reconsider. *See* Def's Br. at 30. That is incorrect. The State prevailed in its motion to reconsider, and "a successful party need not cross-appeal to preserve error on a ground urged but ignored or rejected in trial court." *See Johnston Equip. Corp. of Iowa v. Indus. Indem.*, 489 N.W.2d 13, 16 (Iowa 1992). If it were proper to parse suppression and reconsideration into separate issues for error-preservation purposes, then Rincon would only be able to challenge the ruling on the motion to reconsider with the arguments she raised at that hearing about *Sanders*—which are not in her brief (because *Sanders* was overruled in 1991). *See* MotionTr. 6:14–10:10; *cf. Acevedo*, 500 U.S. at 570–80. The more sensible approach is to

treat the arguments that were raised before the first ruling on the motion to suppress as preserved for either side to raise on appeal. *Accord State v. Enriquez*, No. 09–1460, 2011 WL 1584114, at *2–4 (Iowa Ct. App. Apr. 27, 2011) (considering challenges to a ruling in a similar procedural posture, without distinguishing between original motion to suppress and motion to reconsider for error preservation).

Additionally, because the State is defending a ruling that found that evidence was admissible, it may defend the ruling on any basis that appears in the record, whether or not it was urged below. The Iowa Supreme Court explained this exception in *DeVoss v. State*:

> Notwithstanding our error preservation requirement, we have consistently applied an exception to it. That exception applies to evidentiary rulings, whether the error claimed involved rulings admitting evidence or not admitting evidence. . . . Perhaps, one reason for the exception is the realization that on retrial the error could easily be corrected. So for judicial economy purposes and to advance finality, we ignore the error preservation requirement.

DeVoss, 648 N.W.2d at 62 (citing *Aller v. Rodgers Mach. Mfg. Co.*, 268 N.W.2d 830, 840 (Iowa 1978), and *State v. Hinkle*, 229 N.W.2d 744, 748 (Iowa 1975)). Sometimes, defendants suggest that this does not apply to rulings on motions to suppress. But that is incorrect. In *State v. Terry*, the Iowa Supreme Court affirmed a ruling that denied a motion to suppress evidence. The district court's ruling was on the

merits of the motion, but the Iowa Supreme Court affirmed without reaching the merits because the motion to suppress was untimely:

> Even though the State did not resist the motion in the district court as untimely and unexcused for good cause, we will uphold the ruling on the admissibility of the evidence on this or any other ground appearing in the record, whether urged or not.

State v. Terry, 569 N.W.2d 364, 368 (Iowa 1997) (citing *State v. McCowen*, 297 N.W.2d 226, 227–28 (Iowa 1980)); *see also State v. Gaskins*, 866 N.W.2d 1, 44 (Iowa 2015) (Waterman, J., dissenting) ("A motion to suppress on constitutional grounds is a challenge to the admissibility of evidence seized from a defendant. Therefore, we may affirm the district court's suppression ruling on any ground appearing in the record, whether urged by the parties or not.");[1] *accord State v. Boll*, No. 19–0487, 2020 WL 4200838, at *2 n.2; *State v. Tostenson*, No. 19–0014, 2019 WL 5063333, at *2 (Iowa Ct. App. Oct. 9, 2019);

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[1] Of course, "the rule described in *DeVoss* is discretionary, and [this Court] must be careful not to exercise [its] discretion to decide an issue concerning the admissibility of evidence on an alternative ground when the parties have not had an opportunity to properly develop or challenge the foundation for the evidence." *See State v. Smith*, 876 N.W.2d 180, 184 (Iowa 2016). That explains the majority's decision not to reach the automobile exception in *Gaskins*, where the testimony at the hearing on the motion to suppress was focused on exploring the SITA issue. *See Gaskins*, 866 N.W.2d at 4 & n.3. But in this case, the unedited video footage in the record provides a fairly comprehensive accounting of events.

State v. Rave, No. 09–0415, 2009 WL 3381520, at *2–3 (Iowa Ct. App. Oct. 21, 2009). So, it is improper to reverse a ruling on the basis of an argument that was never made below, and it is risky to affirm on the basis that is not fully developed in the record—but it is still proper to affirm a ruling on a motion to suppress on grounds that were not urged below, as long as factual support for that basis to affirm is clear upon an examination of a sufficiently developed record. Moreover, to affirm a ruling on a motion to suppress, an appellate court may even rely on parts of the factual record that were developed *at trial*—which logically cannot be urged as grounds for a pretrial ruling. *See State v. Schubert*, 346 N.W.2d 30, 33 (Iowa 1984) ("In determining whether the court erred in overruling a motion to suppress, we may consider, in order to uphold a district court's ruling, not only the evidence in the hearing on the motion to suppress but also the later trial evidence."); *accord United States v. Carroll*, 267 U.S. 132, 162 (1925) (holding it was "immaterial" whether defendants were correct that the evidence at the pretrial motion stage "was much less than that shown on the trial" because the trial record established that the search was constitutional, "so no right of the defendants was infringed" by denial of that motion and their convictions "should not be set aside on such a ground").

Some Iowa opinions have intimated that *Terry* may have been implicitly overruled by *DeVoss*. For example, *Tubbs* is sometimes cited as though it "reject[ed] consideration of the State's timeliness objection due to its failure to raise the issue at the district court level." *See State v. Newton*, 929 N.W.2d 250, 254 (Iowa 2019) (citing *State v. Tubbs*, 690 N.W.2d 911, 914 (Iowa 2005)). But that is inaccurate. In *Tubbs*, the State did not argue that the court should affirm on that basis. *See Tubbs*, 690 N.W.2d at 914 (explaining that the State "does not assert a timeliness objection" and only defended the ruling on the merits). That waived the argument for the purposes of the appeal—which was a concession that the State made because it did not notice that *DeVoss* would allow it to defend the evidentiary ruling on that basis. *See id.*

Some Iowa courts have read *DeVoss* to bar them from affirming a ruling on the basis of the *actual grounds* for the ruling below, if it was not urged by the prevailing party before that ruling issued. *See, e.g.*, *State v. Ruhs*, 885 N.W.2d 822, 824–26 (Iowa Ct. App. 2016). That illustrates the fundamental misunderstanding. *DeVoss* is not about penalizing advocates who fail to make particular arguments, treating advocacy as some kind of sport. Rather, *DeVoss* intends to promote *fairness* to parties and to the lower court. It is fair to affirm

on the basis for the actual ruling below—that is never an "ambush." *See DeVoss*, 648 N.W.2d at 63. And even an "ambush" that offers a new reason to affirm is not unfair when "the error claimed involve[s] rulings admitting evidence." *See id.* at 62–63. It is not unfair because it still requires a factual record that is developed enough to support the alternative grounds for the evidentiary ruling. That alleviates any potential unfairness by ensuring that the parties had a fair opportunity to notice and litigate that alternative route to the same result. *See Smith*, 876 N.W.2d at 184. Any remaining unfairness is outweighed by interests in avoiding pointlessly cumulative proceedings, because "there is no point in reversing a conviction when the evidence will be admissible at retrial in any event." *See State v. Dessinger*, No. 18–2116, 2021 WL 1584079, at *5 (Iowa Apr. 23, 2021). It would make no sense to apply that rationale to pretrial rulings on admissibility of evidence, while declining to apply it to rulings on motions to suppress evidence that determine "the admissibility of evidence seized from a defendant." *See Rave*, 2009 WL 3381520, at *3; *accord Boll*, 2020 WL 4200838, at *2 n.2. As long as the alternative basis for admitting the evidence is apparent from a fully developed record, justice is served by affirming on those grounds—even if they were not raised or considered below.

The clearest illustration of this concept may be *State v. Vincik*, which involved physical evidence that was found after Vincik called 911 and summoned officers into his home. The Iowa Supreme Court noted that, in reviewing the ruling on the motion to suppress, it could consider "the evidence introduced at trial"—even though it was not in the record when the district court ruled on the motion to suppress. *See State v. Vincik*, 436 N.W.2d 350, 352–53 (Iowa 1989) (citing *Schubert*, 346 N.W.2d at 33). Some of the items were in plain view, which was a basis for the ruling below. But other items were not in plain view, and they had been admitted anyway. Even so, *Vincik* affirmed the ruling that permitted admission of that evidence, on a different basis:

> . . . Although [the gun and T-shirt] were not in plain view and were therefore improperly seized, we are convinced the record clearly demonstrates they would inevitably have been discovered during the removal of Inez's body from the bed. . . . It does not matter that the district court did not rely on this ground when admitting the gun and t-shirt, for its ruling will be upheld if sustainable on any grounds appearing in the record.

See id. at 354 (citing *State v. Jespersen*, 360 N.W.2d 804, 806 (Iowa 1985)). It was not necessary to point to a place in the record where the State had argued that basis for admission—the developed record had retroactively established that the evidentiary ruling was *correct*, and it was not unfair to Vincik to recognize that as a basis to affirm.

The upshot of this error-preservation section is: Rincon may raise any grounds for suppression that were necessarily considered and rejected by the pair of rulings below. *See Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012). And because this is a challenge to the ruling that evidence that was seized from Rincon was admissible, this Court may affirm on any basis that is apparent and fully developed in the record on appeal, even if it was not urged below. *See DeVoss*, 648 N.W.2d at 62; *Terry*, 569 N.W.2d at 368; *Vincik*, 436 N.W.2d at 354.

Standard of Review

"When a defendant challenges a district court's denial of a motion to suppress based upon the deprivation of a state or federal constitutional right, [the] standard of review is de novo." *See State v. Coffman*, 914 N.W.2d 240, 244 (Iowa 2018) (quoting *State v. Storm*, 898 N.W.2d 140, 144 (Iowa 2017)).

Merits

Rincon is right that a passenger in a vehicle will typically have standing to challenge a search of their own backpack, and to assert a privacy interest in its contents. But this Court should still affirm the ruling that denied her motion to suppress the marijuana recovered from her backpack, for two reasons—each independently sufficient.

A. At the very least, officers could detain Rincon and move her—and her backpack—out of the vehicle. When they did, her marijuana was in plain view, which meant that officers could seize it.

Rincon primarily challenges *State v. Eubanks*—her goal is to establish a new rule that having probable cause to search a vehicle for evidence or contraband under the automobile exception does not let officers search a container that belongs to a passenger, if the passenger takes that container out of the vehicle at some point after the officers have probable cause for the search. *See* Def's Br. at 17–18 and 79–92. But even if Rincon could redraw the scope of the automobile exception, this baggie of marijuana would remain admissible because it was in plain view, hanging out of her backpack, while she was detained. *See* Def's Ex. B, 1:50–2:02. That detention was lawful. Once the officers saw that marijuana, they could seize it. Even if the search of the rest of the backpack was invalid, this particular seizure was constitutional.

To detain Rincon and the other passengers, officers only needed reasonable suspicion. *See, e.g.*, *State v. Mitchell*, 498 N.W.2d 691, 693 (Iowa 1993) (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). The officers had probable cause to believe the vehicle was stolen; that means they could seize it, and they could also search it for evidence of that theft (and none of the occupants had standing to challenge that search).

See State v. Halliburton, 539 N.W.2d 339, 342–43 (Iowa 1995) (citing *Rakas v. Illinois*, 439 U.S. 128, 150 (1978)). Seizing and searching the vehicle would require the passengers to get out. Officers could also detain the passengers to investigate reasonable suspicions that the passengers were involved in ongoing criminal activity. *See, e.g.*, *Maryland v. Wilson*, 519 U.S. 408, 414–15 (1997).

Reasonable suspicion is a lower standard than probable cause. *See State v. Struve*, 956 N.W.2d 90, 98 (Iowa 2021) ("[T]he officer's suspicion need not be infallible or even rise to a fifty-fifty chance the individual is engaged in criminal activity to be reasonable."); *accord State v. Kreps*, 650 N.W.2d 636, 641–43 (Iowa 2002). Any of these passengers could have been accomplices to the vehicle theft, or the open container offense (or if they were telling a half-truth when they said that the Hennessey belonged to the driver, accomplices to OWI). The contemporaneous discovery of the baggies of methamphetamine in the driver-side door also gave the officers reasons to believe that more methamphetamine would be concealed in locations that were within reach of the passengers, who would have had time to hide any contraband within their reach as officers approached the car. *See, e.g.*, *Maryland v. Pringle*, 540 U.S. 366, 373 (2003) (quoting *Wyoming v.*

Houghton, 526 U.S. 295, 526 U.S. 295, 304–05 (1999)) (explaining that passengers "will often be engaged in a common enterprise with the driver, and have the same interest in concealing the fruits of the evidence of their wrongdoing"); *accord Larocca v. State*, 883 A.2d 986, 998–99 (Md. Ct. Spec. App. 2005), *partially overruled on other grounds by Grimm v. State*, 135 A.2d 844 (Md. 2016)) (noting "the reasonableness, and hence permissibility, of an inference that people who know each other and are traveling in a car in circumstances indicating drug using or selling activity are operating together, and thus are sharing knowledge of the essentials of their operation"). So all of the passengers could be temporarily detained to investigate the reasonable suspicion of their involvement in criminal activity, arising from their presence in the stolen vehicle where open containers and methamphetamine had already been found.[2]

While detaining the passengers, officers could temporarily seize and detain Rincon's backpack—it was within Rincon's reach as the officers approached, and it could contain the items that were objects

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[2] During that detention, officers could also take Rincon by the arm "as a nonthreatening gesture or benign means of ushering [her] to a specific location" during that investigative detention. *See State v. DeWitt*, 811 N.W.2d 460, 472 (Iowa 2012).

of the ongoing investigation (which would include an open container, methamphetamine, or property that belonged to the vehicle's owner). Generally, "temporary seizure of luggage is constitutional so long as the seizure is not overly intrusive upon the person's privacy interest in the property, and so long as the property is not detained for a long period of time." *See Murphy v. Mifflin Cnty. Regional Police Dept.*, 548 Fed. Appx. 778, 781–82 (3d Cir. 2013) (quoting *United States v. Frost*, 999 F.2d 737, 740 (3d Cir. 1993)). So the officers would be able to temporarily seize both Rincon and her backpack while they were investigating a reasonable suspicion of each passenger's participation in each of the various crimes that they had probable cause to believe had been committed, involving that vehicle they were all riding in.

That means Officer Steinkamp could bring Rincon and her backpack to the front of Officer Johnson's patrol vehicle, and he could place her backpack on top of the vehicle (at least for the duration of a brief investigative detention). When he did, another officer noticed the baggie of marijuana in plain view. *See* Def's Ex. B, 1:50–2:02. At that point, because it was immediately apparent that it was "weed," an officer could seize it. *See Texas v. Brown*, 460 U.S. 730, 733–44 (1983); *cf. State v. Carey*, No. 12–0230, 2014 WL 3928873, at *6–7 &

n.4 (Iowa Ct. App. Aug. 13, 2014) (upholding plain-feel discovery of baggie containing marijuana and subsequent plain-view observation of marijuana inside that baggie, because "there is nothing in the record before us to suggest [the officer] had to open the bag or manipulate it in any way before discovering the presence of marijuana"). The officer found and extracted the baggie of marijuana without needing to open or unzip any compartment of the backpack—it was in plain view, and it was immediately apparent that it was marijuana. *See* Def's Ex. A, 7:50–8:02; *accord* State's Ex. 1 (Stream 2, wide view), 7:50–8:02.

It is unnecessary to go any further. The methamphetamine evidence that was discovered during the subsequent search of the backpack was not relevant to the possession-of-marijuana charge, and that was the only charge that was not dismissed. *See* Verdict (9/25/20); App. 53; Sentencing Order (10/8/20); App. 57. The remainder of this brief establishes an alternative basis for affirming the denial of the motion to suppress, which involves dealing with Rincon's challenge to *Eubanks*. But if this Court agrees that the baggie of marijuana was discovered because it was in plain view—visibly protruding out of the backpack during a lawful detention—then it should affirm without considering any other arguments.

B. Rincon's backpack was inside the vehicle when officers developed probable cause to search it. Under *Eubanks*, the backpack was within the permissible scope of that search.

Discovery of contraband inside a vehicle is generally sufficient to give rise to probable cause to search that vehicle. *See, e.g.*, *State v. Edgington*, 487 N.W.2d 675, 678 (Iowa 1992). Additionally, "[w]hen there is probable cause to search a vehicle, law enforcement may also search any belongings of a passenger in the vehicle that can conceal the object of the search." *See State v. Brandt*, No. 18–2159, 2020 WL 1310303, at *2 (Iowa Ct. App. Mar. 18, 2020) (citing *Houghton*, 526 U.S. at 304, and *Eubanks*, 355 N.W.2d at 60); *State v. Swenson*, No. 17–1460, 2019 WL 141009, at *2 (Iowa Ct. App. Jan. 9, 2019).

The biggest sticking point is that the video footage does not make it clear precisely when the officers first noticed the baggies of methamphetamine in the driver-side door. Rincon argues that it did not happen until "all the passengers were out of the vehicle." *See* Def's Br. at 45–46 (citing Def's Ex. B, 2:20). Rincon is correct that officers did not *say it out loud* until that point. But officers are not obligated to narrate their perceptions out loud, especially when it may further their investigative interests to allow the passengers to think that they had only noticed the open containers. The minutes of testimony say

that Officer Johnson noticed the baggies of methamphetamine *before* the passengers were detained. *See* Minutes (2/3/20) at 1; C-App. 4. He certainly had an opportunity to make that observation, when he opened the driver-side door. *See* Def's Ex. A, 2:12–2:30. Then, when Officer Steinkamp said that there was "dope right here in the door," Officer Johnson did not turn to look and did not vocalize any reaction whatsoever—which suggests that he already knew it was there. *See* Def's Ex. B, 2:03–2:27; Def's Ex. A, 7:25–7:35. Then, directly after all four passengers were detained and led away from the vehicle, Officer Johnson returned to the vehicle and shined his light *directly on* the methamphetamine in the door—he did not ask Officer Steinkamp precisely where it was. *See* Def's Ex. A, 8:00–8:10. He also showed another officer where those baggies of methamphetamine were, too—without any help from Officer Steinkamp. *See* Def's Ex. A, 9:18–9:28. That suggests that he knew it was there from his earlier observation, and he just waited to inspect it, mention it, or otherwise call attention to that discovery until after the passengers had been cleared out.

In any event, it does not matter when the officers noticed the methamphetamine, because they immediately found probable cause to search the vehicle for evidence of the open container violation (and

aiding and abetting OWI). Right away, Rincon told Officer Johnson that the bottle of Hennessey was not hers. *See* Def's Ex. A, 2:25–3:00. Officers were not required to take that claim at face value. Moreover, there was at least one additional open container, in the backseat. *See* Def's Ex. A, 4:25–4:38. Also, the key was in the ignition, the vehicle was running, and the passengers seemed to be waiting for the driver to return to complete their trip—none of them had been picked up at this location, so everyone in the car and everything in their possession must have been in motion on that public road, just moments earlier. *See* Iowa Code § 321.284(1); Iowa Code § 321.284A(1); *contra State v. Phillips*, No. 16–0319, 2016 WL 7403765, at *2–4 (Iowa Ct. App. Dec. 21, 2016); *State v. Brown*, No. 13–2054, 2015 WL 4468841, at *2–3 (Iowa Ct. App. July 22, 2015). So there was probable cause to search the vehicle for any evidence of that open-container violation—which would naturally include discarded cups, common mixers, or even bottles containing already-mixed drinks. *See Brandt*, 2020 WL 1310303, at *2 (affirming denial of motion to suppress evidence from search of Brandt's purse, because the purse was "large enough to conceal an open container," and the deputy had "probable cause to search the vehicle for open containers of alcohol"). Officer Johnson

specifically informed the passengers that he had probable cause to arrest all of them for the multiple open container violations that he had already observed, when he was collecting IDs and information. *See* Def's Ex. A, 4:15–5:13. That same probable cause would permit a search of the vehicle, which could include Rincon's backpack because it was large enough to contain the evidence of the offense that he had probable cause to investigate. *See Brandt*, 2020 WL 1310303, at *2.

Rincon does not challenge the automobile exception, which allows officers to search a vehicle with probable cause. *See generally State v. Storm*, 898 N.W.2d 140 (Iowa 2017). She also does not argue that officers may not search containers that belong to a passenger, if they are inside the vehicle and large enough to contain the object of the search. *See generally Houghton*, 526 U.S. 295; *United States v. Ross*, 456 U.S. 798 (1982). Her argument is a challenge to *Eubanks*, and it is the same argument that *Eubanks* rejected: that "once the patrolman had directed [her] to exit the car, the exigency ordinarily present in vehicle searches had ended." *Eubanks*, 355 N.W.2d at 59. *Eubanks* held that the officer could still search the passenger's purse because the purse was inside the car at the moment when the officer developed probable cause to search the vehicle for marijuana (and to

search every container in the vehicle that could contain it). The act of carrying the purse when she left the car was just like entering a house that officers had a warrant to search, picking up a purse from inside the house, stepping out of the house, and then claiming that the purse was no longer within of the scope of the search warrant.

> Once the patrolman lawfully stopped the car and had probable cause to search it for contraband, in this case marijuana, he could lawfully open and examine all containers within the vehicle from the time probable cause appeared. The exigency inherent in vehicle search cases is not necessarily dependent on whether the driver or passenger remains in or exits from the car before or during the search. Once the patrolman lawfully stopped the car and had probable cause to search for contraband, all containers within the car when it was stopped were fair game for the car search. Defendant had no right to insulate her purse or any other container from a lawful warrantless search by the simple expedient of physically removing the purse and its contents from the car while the search was in progress.

Eubanks, 355 N.W.2d at 60. Moreover, anyone in a vehicle (not just a passenger) has a reduced expectation of privacy in objects that are in transit on public roadways. That expectation of privacy was reduced even further when probable cause to search the entire vehicle arose. Whatever fraction of an ordinary expectation of privacy still remained "must yield to the State's legitimate interest in thoroughly searching lawfully stopped vehicles for contraband once there is probable cause

for the vehicle search." *See id.*; *cf. State v. Leer*, No. 12–1904, 2013 WL 4769391, at *3 (Iowa Ct. App. Sept. 5, 2013) ("The government's interest in preventing open container violations outweighs the minimal intrusion to . . . inspect the can in the bed of the pickup, as an operator of a motor vehicle with an open container of alcohol could lead to the more serious offense of operating while intoxicated."). That was the basis for the district court's ruling that on the motion to reconsider:

> Even if Rincon did have some expectation of privacy in the detained vehicle, such expectation may not survive if probable cause is given to believe the vehicle is transporting contraband. . . . [P]rior to the search of Rincon's backpack, law enforcement had probable cause to believe the detained vehicle was transporting contraband. Accordingly, Rincon had no expectation of privacy that would have precluded law enforcement from searching the containers within the detained vehicle, which included her backpack.

Ruling (6/16/20) at 2–3; App. 46–47 (citing *Ross*, 456 U.S. 798 at 823; and *Eubanks*, 355 N.W.2d at 60). Rincon attacks this on two grounds.

First, Rincon attacks the premise that passengers in a vehicle have a reduced expectation of privacy in their belongings. *See* Def's Br. at 65–68. She argues that *United States v. Chadwick* was never overruled because "it is not an automobile-exception case." *See* Def's Br. at 66–68 & n.5. That is not entirely correct—and the grain of truth in that claim only illustrates why *Chadwick* is inapplicable to this case.

In *Chadwick*, officers tracked a footlocker as it was transported by train, offloaded and taken through the train station, and loaded into an automobile. Then, they arrested everyone, took the automobile to a nearby federal building, and brought the footlocker inside. About 90 minutes after that initial seizure, they searched the footlocker. *See United States v. Chadwick*, 433 U.S. 1, 3–5 (1977), *partially abrogated by Acevedo*, 500 U.S. at 579. The government argued that the same inherent mobility that justified a warrantless search of an automobile would also justify a search of this footlocker. The Court disagreed:

> Once the federal agents had seized it at the railroad station and had safely transferred it to the Boston Federal Building under their exclusive control, there was not the slightest danger that the footlocker or its contents could have been removed before a valid search warrant could be obtained. . . . With the footlocker safely immobilized, it was unreasonable to undertake the additional and greater intrusion of a search without a warrant.

Id. at 13. But even before *Acevedo*, the Court drew a key distinction: *Chadwick* did not limit warrantless searches of luggage found within a vehicle if officers had probable cause to search *the whole vehicle*, rather than probable cause to search the luggage alone:

> [W]hen the police have probable cause to search an automobile, rather than only to search a particular container that fortuitously is located in it, the exigencies that allow the police to search the entire automobile without a warrant support the warrantless search of every

> container found therein. . . . This analysis is entirely consistent with the holdings in *Chadwick* and *Sanders*, neither of which is an 'automobile case,' because the police there had probable cause to search the double-locked footlocker and the suitcase respectively before either came near an automobile.

Ross, 456 U.S. at 816 (quoting *Robbins v. California*, 453 U.S. 420, 435 (1981) (Powell, J., concurring)). So even before *Acevedo*, it would have been clear that Rincon's challenge would fail—Officer Johnson had probable cause to search *the entire vehicle* for evidence relating to those open container violations (and the methamphetamine), and Rincon's backpack was within the scope of that search.

Rincon relies on the part of *Chadwick* that seems applicable to automobile-exception cases that involve luggage: that "[a] person's expectations of privacy in personal luggage are substantially greater than in an automobile." *See* Def's Br. at 67 (quoting *Chadwick*, 433 U.S. at 13). But that part of *Chadwick*—at least as applied to luggage inside vehicles—did not survive *Ross* and *Acevedo*. In *Ross*, the Court examined precedent applying the automobile exception and held that it had never recognized "a constitutional distinction between 'worthy' and 'unworthy' containers." *See Ross*, 456 U.S. at 822. It noted that its holding in *Carroll*, recognizing the automobile exception in 1925, "was based on the Court's appraisal of practical considerations viewed

in the perspective of history"—which included many cases where the scope of the search of the automobile was understood to include all effects that could contain the objects of the search. *See id.* at 817–20. That authority to search for contraband "would be largely nullified if the permissible scope of a warrantless search of an automobile did not include containers and packages found inside the vehicle," especially given the reality that "by their very nature [as contraband] such goods must be withheld from public view." *See id.* at 820 & n.6. To be sure, Rincon had *some* expectation of privacy in her backpack (and would have Fourth Amendment standing). But *Ross* rejected the attempt to interpose any special privacy interest in a specific kind of container—like the luggage described in *Chadwick*—to exempt it from the scope of a search of the entire vehicle, under the automobile exception:

> [T]he Fourth Amendment provides protection to the owner of every container that conceals its contents from plain view. But the protection afforded by the Amendment varies in different settings. The luggage carried by a traveler entering the country may be searched at random by a customs officer; the luggage may be searched no matter how great the traveler's desire to conceal the contents may be. A container carried at the time of arrest often may be searched without a warrant and even without any specific suspicion concerning its contents. A container that may conceal the object of a search authorized by a warrant may be opened immediately; the individual's interest in privacy must give way to the magistrate's official determination of probable cause.

> In the same manner, an individual's expectation of privacy in a vehicle and its contents may not survive if probable cause is given to believe that the vehicle is transporting contraband. Certainly the privacy interests in a car's trunk or glove compartment may be no less than those in a movable container. . . . These interests must yield to the authority of a search, . . . which—in light of *Carroll*—does not itself require the prior approval of a magistrate. The scope of a warrantless search based on probable cause is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause. Only the prior approval of the magistrate is waived; the search otherwise is as the magistrate could authorize.

Id. at 822–23. So, to the extent that *Chadwick* remains good law, it does not change the fact that there is a reduced expectation of privacy in luggage (or any other container) that is inside a vehicle, if officers have probable cause to search of that vehicle for items that could be concealed inside that particular container. *See id.* at 824.

Second, Rincon argues that "even if [her] backpack once was in the vehicle with a reduced expectation of privacy, its full privacy expectation was restored when she stepped onto the street with backpack in hand." *See* Def's Br. at 68–88. This is the argument that *Eubanks* rejected; Rincon is calling for *Eubanks* to be overruled. *See* Def's Br. at 81–83. Part of the justification for *Eubanks* is that evasion should not be rewarded (and should not be incentivized). *See Eubanks*, 355 N.W.2d at 60. Other courts generally concur. *See, e.g.*, *State v.*

Roe, 90 P.3d 926, 933 (Idaho Ct. App. 2004) ("[A] passenger cannot, upon being asked to exit a vehicle, extract various containers from the vehicle to avoid search of the containers."); *State v. Steele*, 613 N.W.2d 825, 828 (S.D. 2000) ("Steele may not, by attempting to remove her purse [from the vehicle], change the facts present to law enforcement at the time justification for the search was triggered."); *cf. State v. Jackson,* 27 P.3d 689, 691 (Wash. Ct. App. 2001) (noting "drivers have an interest in denying ownership in order to avoid liability for contraband which they can empower the passenger to remove"). The interest that Rincon is asserting is a right to thwart a pending search that Officer Johnson had probable cause to conduct, by removing her backpack from the vehicle *after* officers had probable cause to search any place in the vehicle that could contain evidence that they had been drinking alcohol (or buying, selling, or using methamphetamine). But as soon as officers made observations that gave rise to probable cause to search the vehicle, that diminished the reasonableness of Rincon's asserted expectation that she could declare her backpack off-limits.

Rincon also maintains that the categorical exigency associated with the automobile exception cannot be invoked once the backpack is outside of the vehicle—like the footlocker in *Chadwick*. The parallel

to *Chadwick* is instructive: the reason why the tactics from *Chadwick* seem intuitively unfair is because those agents were lying in wait, and they only moved to seize the footlocker after it was put into a vehicle. *See Chadwick*, 433 U.S. 1, 3–5. Essentially, the agents manufactured the exigency that they later invoked to justify the warrantless search. Rincon's argument fails because *Eubanks* refused to let defendants manipulate the scope of a vehicle search in an analogous way. *See Eubanks*, 355 N.W.2d at 60 ("Defendant had no right to insulate her purse or any other container from a lawful warrantless search by the simple expedient of physically removing the purse and its contents from the car while the search was in progress."). *Eubanks* envisions clear boundaries on the permissible scope of vehicle searches: officers may search any containers that can conceal the objects of their search if those containers were inside the vehicle when probable cause arose. Clear boundaries are preferable. *See, e.g.*, *Storm*, 898 N.W.2d at 156 (quoting *State v. Hellstern*, 856 N.W.2d 355, 364 (Iowa 2014)) (noting preference for "bright-line rules in time-sensitive interactions").

The State is not arguing for an approach where officers could develop probable cause for a search *later*, then track down and search all purses and backpacks that were inside the vehicle to begin with.

Nor is the State arguing that Iowa officers should be permitted to act like the officers in *Chadwick*, manufacturing their own exigencies. Rather, the State is merely defending the common-sense approach that allows officers to complete the search that was authorized, to the extent that matches the probable cause that originally authorized it. Specifically, officers had probable cause to believe that *somewhere* in the vehicle, there would be more evidence of open container violations (which might also establish that they were aiding and abetting OWI) and more evidence of methamphetamine-related offenses. And the kind of evidence they were seeking could have easily been concealed in Rincon's backpack. *Accord* State's Ex. 1 (Stream 2), 8:01–8:13. The bright-line rule from *Eubanks* is very fair. Here, it enabled officers to carry out their search, no matter what Rincon did while the officers made the necessary preparations—and they could even take Rincon and her backpack to a well-lit and open location where Rincon could see what they were doing, and where there would be clear footage to document their search. *See, e.g.*, State's Ex. 1 (Stream 2), 6:25–8:45. To the extent Rincon is arguing that those accommodations dispelled the exigency that would otherwise justify the search, those arguments should be rejected as furthering no actual privacy interest to offset the

burden that they would impose. Officers would conduct essentially the same search of Rincon's backpack while it remained in the footwell, but they would do it with worse lighting, without assurance to Rincon that they were treating her possessions with care (and that they were not planting evidence), and without creating usable video footage to authoritatively establish what actually happened during that search. *See Storm*, 898 N.W.2d at 152 (quoting *State v. Witt*, 126 A.3d 850, 872 (N.J. 2015)) (rejecting call for more stringent limits on searches where the court "did not perceive any real benefit to our citizenry").

Rincon's challenge to *Eubanks* should be considered in a case where the conviction was attributable (at least in part) to evidence that was not in plain view. *See State v. Senn*, 882 N.W.2d 1, 32 (Iowa 2016) (Cady, C.J., concurring specially). But if this Court must reach this issue, it should reject Rincon's challenge to *Eubanks* and affirm the district court's ruling that applied *Eubanks*. *See* Ruling (6/16/20) at 2–3; App. 46–47 (citing *Ross*, 456 U.S. 798 at 823; and *Eubanks*, 355 N.W.2d at 60). Either way, this Court should affirm the conviction.

CONCLUSION

The State respectfully requests that this Court reject Rincon's challenge and affirm her conviction.

REQUEST FOR NONORAL SUBMISSION

This case should be set for nonoral submission. In the event argument is scheduled, the State asks to be heard.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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Dated: June 11, 2021

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