IN THE SUPREME COURT OF IOWA
Supreme Court No. 20-1549

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SANTOS RENE TORRES,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR WARREN COUNTY
THE HON. BRENDAN GREINER & KEVIN PARKER, JUDGES

APPELLEE'S BRIEF

THOMAS J. MILLER
Attorney General of Iowa

GENEVIEVE REINKOESTER
Assistant Attorney General
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319
(515) 281-5976
(515) 281-4902 (fax)
genevieve.reinkoester@ag.iowa.gov

DOUG A. EICHHOLZ
Warren County Attorney

JUSTIN T. ROGERS
Assistant Warren County Attorney

ATTORNEYS FOR PLAINTIFF-APPELLEE FINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

State Cases

State Rules/Statutes

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. The District Court Correctly Denied Defendant's Motion to Suppress.

Authorities

Caniglia v. Strom, ___ U.S. ___, 141 S. Ct. 1596 (2021)
Mincey v. Arizona, 437 U.S. 385 (1978)
State v. Gibbs, 941 N.W.2d 888 (Iowa 2020)
State v. Kreps, 650 N.W.2d 636 (Iowa 2002)
State v. Lane, 726 N.W.2d 371 (Iowa 2007)
State v. Luloff, 325 N.W.2d 103 (Iowa 1982)
State v. McGee, 959 N.W.2d 432 (Iowa 2021)
State v. Pals, 805 N.W.2d 767 (Iowa 2011)
State v. Sefcik, No. 02-1801, 2004 WL 149958 (Iowa Ct. App. Jan. 28, 2004)
State v. Turner, 630 N.W.2d 601 (Iowa 2001)

II. Defendant Was Not Subject to a Custodial Investigation, so No Suppression of His Statement is Warranted.

Authorities

Berkemer v. McCarty, 468 U.S. 420 (1984)
United States v. Oates, 560 F.2d 45 (2d Cir. 1977)
United States v. Patane, 542 U.S. 630 (2004)
United States v. Pelayo-Ruelas, 345 F.3d 589 (8th Cir. 2003)
In re S.C.S., 454 N.W.2d 810 (Iowa 1990)
State v. Countryman, 572 N.W.2d 553 (Iowa 1997)
State v. Decanini-Hernandez, No. 19-2120, 2021 WL 610103 (Iowa Ct. App. Feb. 17, 2021)
State v. Madsen, 813 N.W.2d 714 (Iowa 2012)
State v. Majouk, No. 19-1850, 2020 WL 7385275 (Iowa Ct. App. Dec. 16, 2020)
State v. Nucaro, 614 N.W.2d 856 (Iowa Ct. App. 2000)

State v. Quintero-Labrada, No. 19-0544, 2020 WL 6482726 (Iowa Ct. App. Nov. 4, 2020)
State v. Schultz, No. 03-1163, 2004 WL 1854158 (Iowa Ct. App. July 14, 2004)
State v. Scott, 518 N.W.2d 347 (Iowa 1994)
State v. Smith, No. 13-0993, 2014 WL 3511811 (Iowa Ct. App. July 16, 2014)
State v. Warren, 955 N.W.2d 848 (Iowa 2021)
Iowa R. Evid. 5.103(a)

III. The Evidence Was Sufficient to Support Defendant's Conviction to Driving While Under the Influence of Alcohol.

Authorities

State v. Anspach, 627 N.W.2d 227 (Iowa 2001)
State v. Dominguez, 482 N.W.2d 390 (Iowa 1992)
State v. Ernst, 954 N.W.2d 50 (Iowa 2021)
State v. Hansen, 750 N.W.2d 111 (Iowa 2008)
State v. Keopasaeuth, 645 N.W.2d 637 (Iowa 2002)
State v. Martens, 569 N.W.2d 482 (Iowa 1997)
State v. Nitcher, 720 N.W.2d 547 (Iowa 2006)
State v. Price, 692 N.W.2d 1 (Iowa 2005)
State v. Sanford, 814 N.W.2d 611 (Iowa 2012)
State v. Thomas, 847 N.W.2d 438 (Iowa 2014)
State v. Warren, 955 N.W.2d 848 (Iowa 2021)
State v. Williams, 695 N.W.2d 23 (Iowa 2005)
Iowa Code § 321J.2(1)(a)
Iowa R. App. P. 6.904(3)(p)

ROUTING STATEMENT

Because this case does not meet the criteria of Iowa Rule of Appellate Procedure 6.1101(2) for retention by the Supreme Court, transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(2).

STATEMENT OF THE CASE

Nature of the Case

Defendant Santos Rene Torres ("Torres") appeals his conviction following a trial on the minutes in which he was found guilty of one count of Operating while Intoxicated, Second Offense, in violation of Iowa Code section 321J.2(2)(b), an aggravated misdemeanor. On appeal, Defendant asserts the district court erred when it denied his motion to suppress because officers lacked reasonable suspicion to seize him and subjected him to custodial interrogation without giving the necessary *Miranda* warnings. Defendant also claims the evidence was not sufficient to support his conviction.

Course of Proceedings

The State accepts Defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

On June 27, 2019, Officer Zach Buehrer was dispatched to a home in Carlisle after it was reported that a young child was hanging out of a second-story window in the home. Minutes of Testimony, Buehrer Report; Conf. App. 34. The screen in the window was broken, and the reporting party was worried the child might fall out of the window. *Id.*; Conf. App. 34. Officer Buehrer was familiar with this home because the Carlisle Police Department had previously responded to other child endangerment incidents there, and he was aware that the family actively worked with DHS. *Id.*; Conf. App. 34.

When Officer Buehrer arrived at the home, he spoke with Leonor Flores, the mother of the three children who lived in the home. *Id.*; Conf. App. 34. All three children were present with Leonor and were aged nine, six, and four. *Id.*; Conf. App. 34. Leonor was "aggressive" with Officer Buehrer and denied any of the children had been upstairs. Suppr. Tr. at 45:5–46:11, Minutes of Testimony, Buehrer Report; Conf. App. 34. But after Leonor spoke with one of the children, the child admitted to being upstairs and said he had his head and arms out of the window to wave at a friend. Minutes of Testimony, Buehrer Report; Conf. App. 34. Officer Buehrer called

DHS to alert them to the situation, then he arrested Leonor for child endangerment. *Id.*; Conf. App. 34.

Around this time, Deputy Derek Konrad arrived at the home as back-up for Officer Buehrer. Suppr. Tr. at 17:1–12. When Deputy Konrad arrived, he stayed outside the home because Officer Buehrer "was dealing with the children and waiting for the DHS worker to come." Suppr. Tr. at 17:13–19.

Prior to her arrest, Leonor called her mother and Defendant—the father of the children—, as well as other family members. Minutes of Testimony, Buehrer Report; Conf. App. 34. DHS worker Kate Roy arrived shortly after Leonor's arrest. Suppr. Tr. at 32:18–33:1, Minutes of Testimony, Buehrer Report; Conf. App. 34. Leonor's mother had already arrived at the home. Suppr. Tr. at 9:2–22.

Defendant arrived at the home not long after Roy. Suppr. Tr. at 10:1–3, 32:18–33:1. Roy was speaking with the three children in the home when Defendant arrived. Suppr. Tr. at 10:11–15. Officer Buehrer informed Defendant about the incident, then Defendant went inside the home to speak with Roy. Minutes of Testimony, Buehrer Report; Conf. App. 34. Officer Buehrer followed Defendant into the home. Suppr. Tr. at 39:10–40:11. Officer Buehrer described

Defendant as agitated and uncooperative. Suppr. Tr. at 46:15–47:6. Officer Buehrer also suspected that Defendant was under the influence of alcohol. Suppr. Tr. at 47:11–48:3. Because an active DHS investigation was taking place within the home and based on Defendant's demeanor, Officer Buehrer did not believe it was safe to allow Defendant into the home without observing him. Suppr. Tr. at 46:24–48:3.

As Defendant moved throughout the house, Officer Buehrer followed. Suppr. Tr. at 42:11–44:4. Officer Buehrer also patted down Defendant to check for weapons. Suppr. Tr. at 44:5–7. When Defendant spoke with Roy, she suspected that he was under the influence. Suppr. Tr. at 11:10–12:8. Roy observed that Defendant was "blinkingly slowly," his speech "appeared to be slower," and he appeared "to lean forward during [the] conversation[.]" Suppr. Tr. at 11:10–12:8.

Initially, Deputy Konrad stayed outside the home while Defendant, Roy, and Officer Buehrer were inside. Suppr. Tr. at 17:13–18:7. But eventually, Deputy Konrad went inside the home to "assist with the children." Suppr. Tr. at 17:20–18:7. The children kept wandering in and out of the house, and "they wanted them away

inside the house. So [Deputy Konrad] was assisting with the children inside[,]" while Defendant spoke with Roy. Suppr. Tr. at 17:20–18:7. Deputy Konrad overheard Roy ask Defendant "about his impairment, if he'd been drinking today. He said he hadn't." Suppr. Tr. at 19:1–14.[1] When Defendant was done speaking with Roy, Deputy Konrad approached him and "could smell the alcohol on his breath. His eyes were bloodshot, speech was slurred." Suppr. Tr. at 19:1–14. Based on these observations, Deputy Konrad asked Defendant to step "outside in front of my patrol car so I could do field sobriety test[s]." Suppr. Tr. at 19:1–14. Defendant went outside with Deputy Konrad but declined to do field sobriety tests or take a PBT. Suppr. Tr. at 19:15–18, 21:11–19. Deputy Konrad asked Defendant if he had been drinking, and Defendant admitted to having two beers at a restaurant before he drove to the home. Suppr. Tr. at 19:19–20:7.

[1] Roy testified that she didn't believe Defendant responded when she asked him if he was under the influence. Suppr. Tr. at 11:10–16.

ARGUMENT

I. The District Court Correctly Denied Defendant's Motion to Suppress.

Preservation of Error

Defendant preserved this argument when he raised it in his motion to suppress, and the district court denied it. 08-12-2019 Motion to Suppress, 08-16-2019 Supplemental Motion, 10-02-2019 Suppression Transcript, 10-11-2019 Ruling; App. 4–19.

Standard of Review

A challenge to the denial of a motion to suppress on federal or state constitutional grounds is reviewed de novo. *State v. Pals*, 805 N.W.2d 767, 771 (Iowa 2011). This review requires an independent evaluation of the totality of the circumstances as shown by the entire record. *Id.* (citing *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001)). While this Court gives deference to the district court's factual findings, it is not bound by them. *Id.* (citing *State v. Lane*, 726 N.W.2d 371, 377 (Iowa 2007)).

Merits

A. There is no evidence that requires suppression, and exigent circumstances permitted the officers to enter the home.

Defendant claims he was illegally seized by law enforcement when an officer followed him into the home. App. Br. at 14–20. But Defendant never argues what the remedy for this illegal seizure should be. He does not point to any evidence in the record that he asserts should be suppressed because of this alleged illegal seizure. As the district court said in its order, "the [c]ourt struggles to find what, if any, evidence was obtained [] during this warrantless search [that is] subject to the exclusionary rule." 10-11-2019 Ruling at 4; App. 16.

Officer Buehrer was the officer who followed Defendant into and around the home. Suppr. Tr. at 25:4–22, 39:10–40:11. Officer Buehrer said he did this because he had an initial suspicion that Defendant had been drinking, Defendant was agitated, and there was an active DHS investigation taking place in the house with the children present. Suppr. Tr. at 46:15–48:3. Office Buehrer's report does not indicate that he collected any incriminatory evidence or statements while he was with Defendant in the home. Minutes of Testimony, Officer Buehrer's Report; Conf. App. 34–35. Likewise, his

testimony at the suppression hearing does not reveal that he collected any incriminatory evidence or statements. *See*, *generally*, Suppr. Tr. at 31:10–50:13. Thus, there does not appear to be anything to suppress from Officer Buehrer's interactions with Defendant or from Officer Buehrer's entry into the home.

When Defendant entered the home, Roy was inside speaking with the children. Suppr. Tr. at 10:4–18. After speaking with the children, Roy "discussed the allegations that were called in to the Department and began the process of safely planning the children out of the home[]" with Defendant. Suppr. Tr. at 12:4–8. During her conversation with Defendant, Roy noticed Defendant was "blinkingly slowly," his speech "appeared to be slower," and he leaned "forward during [the] conversation[.]" Suppr. Tr. at 11:10–12:8. This led her to believe he was under the influence. Suppr. Tr. at 11:10–12:8.

Defendant does not allege Roy was in the home illegally. The record shows that Roy was in the home with the three minor children to determine where they could be placed because their mother had been arrested, and her purpose in speaking with Defendant was to apprise him of this situation and help determine where the children could be placed. Suppr. Tr. at 10:11–15, 12:4–8. Nothing in the record

indicates that Roy's observations of Defendant's intoxicated state were the result of any illegality, so suppression would not be warranted.

While Roy spoke with Defendant, Deputy Konrad entered the home to help care for the children. Suppr. Tr. at 17:20–18:7. Defendant does not challenge this entry, nor does he dispute this was the reason Deputy Konrad entered. *See*, *generally*, App. Br. at 14–21. The crux of Defendant's argument is that he was "seized [] as soon as he arrived" to the home. App. Br. at 16. But the record shows Deputy Konrad stayed outside while Officer Buehrer entered the home with Defendant. Suppr. Tr. at 17:13–18:7, 25:4–22, 39:10–40:11. Deputy Konrad only entered the home when it was requested that he watch the children. Suppr. Tr. at 17:20–18:7. Nothing in Defendant's brief mentions or challenges this entry or the reasons for it. Because Defendant does not challenge this entry, any argument against it is waived. *See State v. Gibbs*, 941 N.W.2d 888, 902 (Iowa 2020) (McDonald, J., concurring specially) (internal citations omitted) ("The failure to clearly identify an issue constitutes waiver…The failure to make an argument in support of an issue constitutes waiver….").

And the record shows that Deputy Konrad was asked to come into the home and watch the children because they were wandering around. Suppr. Tr. at 17:20–18:7. Roy was speaking with the other adults in the home. Suppr. Tr. at 9:13–12:8. While Roy was speaking with Defendant, Deputy Konrad overhead the conversation and approached Defendant, where he immediately noticed several signs of intoxication. Suppr. Tr. at 19:1–14. Because Defendant does not challenge Deputy Konrad's entry into his home, and because the record shows Deputy Konrad entered the home only to care for the minor children, his observations of Defendant's intoxication in the home are also not suppressible.

And based on these observations, Deputy Konrad asked Defendant to step "outside in front of my patrol car so I could do field sobriety test[s]." Suppr. Tr. at 19:1–14. Defendant went with the deputy but declined to do field sobriety tests or take a PBT. Suppr. Tr. at 19:15–18, 21:11–19. Deputy Konrad then briefly spoke with Defendant, and he admitted to drinking two beers. Again, these observations and Defendant's statement are not suppressible because at this time, Deputy Konrad had reasonable suspicion to conduct an

OWI investigation. *State v. Kreps*, 650 N.W.2d 636, 641–42 (Iowa 2002).

Finally, the district court determined that the officers entered "the home under exigent circumstances such that a failure to enter the home might subject the child to harm or neglect. The exigency continued after the officers took the mother into custody and DHS attempted to find a suitable parent or placement for the children." 10-11-2019 Ruling at 4; App. 16.

"[W]arrants are generally required to search a person's home or his person unless 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Mincey v. Arizona*, 437 U.S. 385, 393–94 (1978) (internal string citation omitted). "Exigent circumstances usually involve danger, risk of escape, or loss of evidence." *State v. Luloff*, 325 N.W.2d 103, 105 (Iowa 1982). As the district court found, "it was incumbent upon the officers to remain near the defendant; the defendant was suspected of being intoxicated, responded to a child endangerment investigation, and most importantly, was visibly agitated at the prospect of his children being removed. In fact, the officers would have been derelict

in their duty to leave the defendant unattended in this situation." 10-11-2019 Ruling at 5; App. 17. Here, the officers did not conduct a search. Instead, Officer Buehrer followed Defendant into the home to ensure everyone's safety, and Deputy Konrad entered the home to care for the children. This was reasonable under the circumstances, and the district court did not err by finding so.

B. If the district court erred in denying Defendant's motion to suppress, a conditional remand is warranted.

While the district court based its decision in part on the exigency exception, the core of the district court's decision was that the officers were performing a community caretaking function when they entered the home to ensure the safety of the children and Roy. 10-11-2019 Ruling at 2; App. 14. On May 17, 2021, the United States Supreme Court determined that the community caretaking doctrine does not apply to warrantless entries into a home. *See Caniglia v. Strom*, ___ U.S. ___, 141 S. Ct. 1596, 1599–1600 (2021). In light of this recent change in the law, if this Court finds the district court erred when it denied Defendant's motion to suppress, the State asks that this Court conditionally affirm Defendant's conviction and remand to the district court to make additional findings and

conclusions and rule on the reasonableness of the entries because the exception on which the district court reasonably relied is no longer available. *See State v. McGee*, 959 N.W.2d 432, 442 (Iowa 2021) (remanding a case for a second suppression hearing after an intervening United States Supreme Court case changed the applicable test); *see also State v. Sefcik*, No. 02-1801, 2004 WL 149958, at *4–6 (Iowa Ct. App. Jan. 28, 2004) (remanding case for further findings when a district court conducted a "flawed" suppression analysis).

II. Defendant Was Not Subject to a Custodial Investigation, so No Suppression of His Statement is Warranted.

Preservation of Error

Defendant preserved this argument when he raised it in his motion to suppress, and the district court denied it in its order. 08-12-2019 Motion to Suppress, 08-16-2019 Supplemental Motion, 10-02-2019 Suppression Transcript, 10-11-2019 Ruling; App. 4–19.

Standard of Review

The Court reviews de novo a defendant's constitutional challenge to his confession. *State v. Madsen*, 813 N.W.2d 714, 721 (Iowa 2012). The Court "give[s] deference to the district court's fact-findings because of its ability to assess the credibility of the witnesses,

but [it is] not bound by those findings." *Id.* (internal citation omitted).

Merits

Next, Defendant claims that he was subjected to a custodial interrogation without being provided *Miranda* warnings, so "[a]ll statements after he was placed in custody outside of his home must be suppressed." App. Br. at 24. The only incriminating statement Defendant made was his admission to Deputy Konrad that he drank two beers at a restaurant before he drove to the home. Suppr. Tr. at 19:19–20:7.

Defendant asserts that Officer Buehrer's conduct within the home demonstrates that Defendant was in custody. App. Br. at 23. Even assuming, *arguendo*, that this is true, Defendant did not make any incriminating statements in his home that would require suppression. The only evidence of Defendant's intoxication that was gathered in the home were Roy and Deputy Konrad's observations that Defendant smelled of alcohol and that his appearance indicated he was intoxicated. Suppr. Tr. at 11:10–12:8, 19:1–14. Even if there was a *Miranda* violation—a position the State rejects—these observations are not suppressible. *See United States v. Patane*, 542

U.S. 630, 637, 642 (2004) (stating that the remedy for a *Miranda* violation is the exclusion of unwarned statements at trial and does not exclude "the physical fruit of a voluntary statement."); *see also State v. Smith*, No. 13-0993, 2014 WL 3511811, at *4 (Iowa Ct. App. July 16, 2014).

Here, Defendant's statement that he drank two beers came after Deputy Konrad developed reasonable suspicion that Defendant was intoxicated, and after Deputy Konrad asked Defendant to step outside to perform field sobriety tests. Suppr. Tr. at 19:1–20:7. While Defendant was detained for Deputy Konrad's OWI investigation, this does not count as "custody" for purposes of *Miranda* protections. *See, e.g.*, *State v. Scott*, 518 N.W.2d 347, 350 (Iowa 1994); *accord Berkemer v. McCarty*, 468 U.S. 420, 436, 440 (1984). Even as an OWI investigation begins, and officers administer field sobriety testing, that does not equate to custody. *See In re S.C.S.*, 454 N.W.2d 810, 812–14 (Iowa 1990); *State v. Quintero-Labrada*, No. 19-0544, 2020 WL 6482726, at *2–3 (Iowa Ct. App. Nov. 4, 2020); *State v. Schultz*, No. 03-1163, 2004 WL 1854158, at *3 (Iowa Ct. App. July 14, 2004); *accord United States v. Pelayo-Ruelas*, 345 F.3d 589, 592 (8th Cir. 2003) ("One is not free to leave a *Terry* stop until the

completion of a reasonably brief investigation, which may include limited questioning."); *State v. Decanini-Hernandez*, No. 19-2120, 2021 WL 610103, at *5–7 (Iowa Ct. App. Feb. 17, 2021) ("Because we believe the initial [encounter] involved only an ordinary *Terry* stop, we conclude *Miranda* warnings were not required then.").

Asking Defendant to perform field sobriety tests and whether he was intoxicated did not transform this detention into a custodial arrest. Questioning is part of any investigative detention, and "the right to interrogate during a 'stop' is the essence of *Terry* and its progeny." *See Scott*, 518 N.W.2d at 350 (quoting *United States v. Oates*, 560 F.2d 45, 63 (2d Cir. 1977)). Of course, there is a fact-specific analysis for determining when an investigative detention becomes so coercive and so police-dominated that it amounts to a custodial arrest. *See, e.g.*, *State v. Countryman*, 572 N.W.2d 553, 558 (Iowa 1997). But in this case, Defendant and Deputy Konrad spoke briefly outside the home, with no apparent restraint on Defendant's movements until his arrest, at the end of the encounter. Suppr. Tr. at 19:15–21:19. An analysis of the *Countryman* factors would not support a finding that this was a custodial interrogation. *See, e.g.*,

State v. Majouk, No. 19-1850, 2020 WL 7385275, at *2–3 (Iowa Ct. App. Dec. 16, 2020) (collecting relevant Iowa cases).

"It is well established that an officer may make a reasonable seizure of a person during an investigatory stop without it rising to the level of an arrest." *See State v. Nucaro*, 614 N.W.2d 856, 859 (Iowa Ct. App. 2000). Defendant may not have been free to leave, but he was not restrained to the degree associated with custodial arrest; this was still an investigative detention, not a custodial interrogation. No suppression of his admission to drinking two beers was warranted.

Finally, even if the district court should have suppressed this statement from Defendant, any error was harmless. *See* Iowa R. Evid. 5.103(a); *see also State v. Warren*, 955 N.W.2d 848, 858 (Iowa 2021) ("It is a fundamental rule of Iowa law that an appellate court will not disturb the judgment of the district court where the record shows that the error cannot operate to the prejudice of the party attacking the judgment."). Even absent Defendant's admission to drinking two beers, the other evidence in the record was sufficient to sustain his conviction. As will be discussed more fully below, Deputy Konrad and Roy smelled alcohol emanating from Defendant and observed his

bloodshot, watery eyes, his unsteady movements, his slurred speech, and his agitation. Defendant also refused all testing. This evidence is sufficient to find Defendant was intoxicated, so even if his statement should have been suppressed, any error was harmless, and his claim fails.

III. The Evidence Was Sufficient to Support Defendant's Conviction to Driving While Under the Influence of Alcohol.

Preservation of Error

In a bench trial, a defendant does not need to move for judgment of acquittal to preserve a sufficiency challenge. *State v. Anspach*, 627 N.W.2d 227, 231 (Iowa 2001).

Standard of Review

"Challenges to the sufficiency of the evidence are reviewed for correction of errors at law." *State v. Hansen*, 750 N.W.2d 111, 112 (Iowa 2008) (internal citation omitted).

Merits

Finally, Defendant claims that the evidence at trial was not sufficient to show he operated a vehicle while under the influence of alcohol. A challenge to the sufficiency of the evidence does not allow a reviewing court to weigh evidence or determine that the jury weighed the evidence incorrectly. "'Inherent in our standard of review of jury

verdicts in criminal cases is the recognition that the jury [is] free to reject certain evidence, and credit other evidence.'" *State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012) (quoting *State v. Nitcher*, 720 N.W.2d 547, 556 (Iowa 2006)). Instead, "review on questions of sufficiency of the evidence is to determine if there is substantial evidence to support the verdict of the jury." *State v. Martens*, 569 N.W.2d 482, 484 (Iowa 1997) (internal string cite omitted). This occurs when "a rational trier of fact" viewing the evidence in the light most favorable to the State "could have found that the elements of the crime were established beyond a reasonable doubt." *State v. Keopasaeuth*, 645 N.W.2d 637, 640 (Iowa 2002) (internal citation omitted). The fact-finder decides which evidence to accept or reject. *State v. Williams*, 695 N.W.2d 23, 28 (Iowa 2005). Evidence is not insubstantial merely because the evidence could support contrary inferences or because the verdict rests on weighing the credibility of conflicting witness testimony. *Id.* "Direct and circumstantial evidence are equally probative." Iowa R. App. P. 6.904(3)(p); *see also State v. Thomas*, 847 N.W.2d 438, 447 (Iowa 2014).

Defendant was charged under Iowa Code section 321J.2(1)(a) under the theory that he was operating a motor vehicle "[w]hile under

the influence of an alcoholic beverage or other drug or a combination of such substances." Iowa Code § 321J.2(1)(a). This charge has two elements: 1) Defendant must have operated a motor vehicle; and 2) Defendant must have done so while under the influence of alcohol or another drug. *Id.* Defendant does not contest that he operated a motor vehicle. So, the question is whether the evidence was sufficient to show Defendant was under the influence of alcohol at the time.

A person is "under the influence" when at least one of the following is true because of alcohol consumption: 1) the person's reasoning or mental ability is affected; 2) the person's judgment is impaired; 3) the person's emotions are visibly excited; or 4) the person, to any extent, loses control of bodily actions or motions. *State v. Dominguez*, 482 N.W.2d 390, 392 (Iowa 1992). Conduct and demeanor are important considerations in evaluating whether a person is under the influence. *State v. Price*, 692 N.W.2d 1, 3 (Iowa 2005). A person's manner of driving also pertains to whether they are under the influence. *Dominguez*, 482 N.W.2d at 392. Any one of these factors on its own can suffice to support an inference that a person is under the influence. *Id.*

Here, when Defendant arrived at the home, Officer Buehrer immediately suspected Defendant had been drinking. Suppr. Tr. at 47:11–48:3. Officer Buehrer also said Defendant was agitated and uncooperative. Suppr. Tr. at 46:15–47:6. When Roy spoke with Defendant, she suspected that he was under the influence. Suppr. Tr. at 11:10–12:3. Roy observed Defendant "blinking slowly," his speech "appeared to be slower," and he appeared "to lean forward during [the] conversation[.]" Suppr. Tr. at 11:10–12:3. Roy asked Defendant "about his impairment, if he'd been drinking today." Suppr. Tr. at 19:1–14.

After overhearing part of this conversation, Deputy Konrad approached Defendant and "could smell the alcohol on his breath. His eyes were bloodshot, speech was slurred." Suppr. Tr. at 19:1–14, Minutes of Testimony, Konrad Report; Conf. App. 15. Based on these observations, Deputy Konrad asked Defendant to step "outside in front of my patrol car so I could do field sobriety test[s]." Suppr. Tr. at 19:1–14, Minutes of Testimony, Konrad Report; Conf. App. 15. While he spoke with Defendant, Deputy Konrad noticed that Defendant "wasn't opening his mouth a lot, so he was trying to talk under his breath so I could not smell the alcohol coming from him." Suppr. Tr.

at 19:19–23. Defendant was also "not sure-footed." Suppr. Tr. at 20:19–25.

Deputy Konrad asked Defendant if he had been drinking, and Defendant admitted to having two beers at a restaurant before he drove to the home. Suppr. Tr. at 19:19–20:7, Minutes of Testimony, Konrad Report; Conf. App. 15. After he was arrested, Defendant was combative, argumentative, and uncooperative. Minutes of Testimony, Konrad Report; Conf. App. 15. And Defendant denied all testing, including field sobriety tests, a PBT, and the Datamaster. Suppr. Tr. at 19:15–18, 21:11–19, 22:2–23:8, Minutes of Testimony, Konrad Report; Conf. App. 15.

Defendant asserts that his refusal to take the FSTs, PBT, and Datamaster test, and his agitation could be attributed to his wife's arrest and the situation of his children, and he relies on a Massachusetts case to claim that "when two reasonable inferences are present, the evidence is [] insufficient if one of the inferences establishes innocence." App. Br. at 27. First, even if Defendant's refusals and his behavior were related to his family situation, this does not establish his "innocence." Second, Iowa has rejected the idea that evidence which is susceptible to more than one inference is

"merely speculative and cannot support a conviction." *State v. Ernst*, 954 N.W.2d 50, 58 (Iowa 2021). The State is not "required to refute every possible inference from the evidence." *Id.* at 57.

Here, the district court found that Defendant was intoxicated because he had "an odor of alcohol, his speech was slurred, his eyes were watery and bloodshot. The defendant admitted to drinking beer, he was combative, and he was very uncooperative, and his emotions were visibly excited." 10-07-2020 Ruling at 2; App. ---. The district court's finding is binding on this Court unless there is "not substantial evidence in the record to support such a finding." *Warren*, 955 N.W.2d at 857 (internal quotation marks and citation omitted). Here, the evidence presented to the district court was sufficient to support its conclusion that Defendant operated his vehicle while under the influence of alcohol. *See id.* at 857–58 (finding the officer's "observations and opinions as to the impairment" of the defendant and "the body camera footage" were "substantial evidence in support of the verdict actually rendered.").

CONCLUSION

For all the reasons stated above, the State respectfully requests that this Court affirm Defendant's conviction and sentence and deny all claims on the merits.

REQUEST FOR NONORAL SUBMISSION

The State requests that this case be submitted without oral argument.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

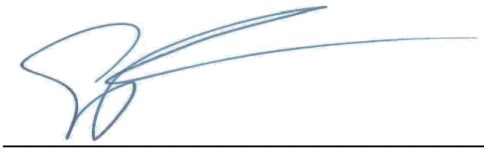
GENEVIEVE REINKOESTER
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
genevieve.reinkoester@ag.iowa.gov

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **4,528** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: September 15, 2021



GENEVIEVE REINKOESTER
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
genevieve.reinkoester@ag.iowa.gov