

IN THE SUPREME COURT OF IOWA  
Supreme Court No. 22-1234

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STATE OF IOWA,  
Plaintiff-Appellant,

vs.

CHASE ROBERT GRIFFIN  
Defendant-Appellee.

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ON DISCRETIONARY REVIEW FROM THE  
IOWA DISTRICT COURT FOR WARREN COUNTY  
THE HONORABLE MARK F. SCHLENKER, JUDGE

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**APPELLANT'S REPLY BRIEF**

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FINAL

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**STATEMENT OF THE ISSUE PRESENTED FOR  
REVIEW**

- I. Whether it is a mistake of law for an officer to stop a vehicle for having a heavily tinted cover over a registration plate that both obstruct the view of the numerals and letters and renders the contents of the plate illegible.**

Authorities

*Boyles v. Cora*, 6 N.W.2d 401 (Iowa 1942)

*Brady v. Welsh*, 204 N.W. 235 (Iowa 1925)

*State v. McFadden*, No. 16-1184, 2017 WL 4315047  
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*State v. Miller*, No. 02-0965, 2003 WL 22015974  
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*State v. Peden*, No. 08-1039, 2009 WL 606236  
(Iowa Ct. App. Mar. 11, 2009)

*State v. Tyler*, 830 N.W.2d 288 (Iowa 2013)

## ROUTING STATEMENT

The State’s initial brief stated that retention was appropriate as this case involves substantial questions of changing legal principles. Iowa R. App. P. 6.1101(2)(f). Following submission of the State’s proof brief, this Court issued an opinion in *State v. Paye*, No. 19-1760, 2022 WL 16841997, at \*1 (Iowa Nov. 10, 2022), where the Court was presented with a similar question of law pertaining to objects obscuring the legibility and readability of registration plates. But in *Paye*, the Court was equally divided, 3–3. Accordingly, it affirmed by operation of law. See Iowa Code § 602.4107. The Court should retain this case as an opportunity to provide the guidance to the bench, bar, and law enforcement that it could not in *Paye*.

As an aside, in his routing statement Griffin requests that if this case is retained, the parties should “be ordered to submit further briefing before any oral argument.” Appellee’s Br. at p.8. This Court should reject Griffin’s unusual request. Griffin’s knowing decision to decline to respond to arguments in his brief was a waiver of his right to do so. See Iowa R. App. P. 6.903(3). Our rules do not contemplate conditional briefing and further delaying the outcome of this appeal.

## ARGUMENT

### I. **Griffin’s Tinted Cover Unlawfully Obscured the Legibility of His Registration Plate.**

The State has two points in reply to Griffin’s brief. First, Griffin’s exhibit does not disprove the existence of a violation at the time of the troopers’ observations. Second, Griffin is mistaken that the Iowa Supreme Court has already rejected the State’s argument that a tinted cover can violate Iowa Code section 321.38. Reversal is appropriate.

First, Griffin relies heavily on a photo exhibit he submitted at the suppression hearing. *See* Appellee’s Br. at pp.10–11; Defense Ex. B (Photo of Plate Cover in Daylight); App. 32. But the photo is a red herring and irrelevant in determining whether Griffin had violated either Iowa Code sections 321.37 or 321.38. At the suppression hearing, Griffin’s counsel admitted the exhibit “was not offered to depict . . . how the vehicle appeared to the [troopers] on February 19, the direction it’s facing, the lighting. We are not attempting to have this stand as an exact replica of the vehicle on that day in question.” Supp. Tr. 34:16–20; Ruling Granting Supp. at p.2 (“Defendant’s own Exhibit B was taken three days later, on February 22, by Defendant from his iPhone, at a distance of 15 to 20

feet from behind the vehicle. He agreed that the photo he introduced was not taken on the date and time of the stop and subsequent arrest of the defendant and that he was not trying to recreate the same conditions at that time.”); App. 18.

Griffin’s photo exhibit has little value. At the time of the stop, the troopers were in a different place, with different lighting, and at a different distance. In those circumstances, the tint fully obscured the registration plate, thus rendering its contents illegible.

Sgt. Major testified “As we approached [Griffin’s vehicle in traffic], I observed to the rear of the vehicle everything was black. I was unable to view the registration plate of any type.” Supp. Tr. 19:12–19. As they got closer, within two car lengths, he “could not see the plate. It was not clearly legible. I was unable to provide letters or numbers to Trooper Nguyen.” Supp. Tr. 20:3–4. When they got even closer, Sgt. Major finally “could actually see that there was a plate on the vehicle.” Supp. Tr. 20:15–21:2. But it was still “very, very difficult just to see the big letters and numbers to the point where [the troopers] couldn’t even read it legibly.” Supp. Tr. 26:20–27:2. Griffin’s exhibit fails to undermine this evidence.

Griffin attempts to bolster his assertion that the registration plate was legible by claiming “Trooper Nguyen admitted he could see all the required information when [Griffin]’s vehicle came to a stop.” Appellee’s Br. at p.10. But this argument fails to consider all the evidence. Even when Trooper Nguyen *thought* he could read the large registration numerals on the registration plate, Sgt. Major noted Nguyen was still reading them incorrectly. Supp. Tr. 20:22–21:7. This emphasizes, not undermines, the fact the plate cover rendered the numerals to be illegible.

At most, Griffin’s exhibit suggests his registration plate could be read despite the tinted cover from an ideal distance and angle when his vehicle was in ideal lighting conditions. *See* Defense Ex. B (Photo of Plate Cover in Daylight); App. 32. But this is no different from a license plate cover that is only readable from certain angles or close distances, and such covers have been found unlawful:

We agree with the district court that both statutes[, Iowa Code sections 321.37 and 321.38,] apply in Peden’s case. The statutes plainly state that the license plate must be in full view, clearly visible, and clearly legible. A license plate that is legible only from certain angles does not comply with these requirements. Aswegan had probable cause to



believe that Peden was violating either section 321.37 or 321.38.

*State v. Peden*, No. 08-1039, 2009 WL 606236, at \*1 (Iowa Ct. App. Mar. 11, 2009); see *State v. McFadden*, No. 16-1184, 2017 WL 4315047, at \*1–2 (Iowa Ct. App. Sept. 27, 2017) (finding stop of defendant’s vehicle lawful where registration plate had “ ‘a film on the license plate’ that ‘kind of interfered with [the officer’s] headlights and created a glare,’ rendering one of the letters ‘on the license plate ... not clearly legible’ ”); *State v. Miller*, No. 02-0965, 2003 WL 22015974, at \*1 (Iowa Ct. App. Aug. 27, 2003) (“Iowa Code section 321.38 does not specify a distance from which the plate must be legible.”). Thus, because Griffin’s heavily tinted plate cover completely obscured the plate and rendered it illegible to the troopers at the time of their observations, the placement of the cover was unlawful. The troopers had probable cause to stop Griffin’s vehicle.

The district court’s findings acknowledged that the dash camera video corroborated the troopers’ assertions that the cover rendered “the plate to be very dark and not legible until the Troopers’ car was parked close behind the defendant’s vehicle.” Ruling Granting Supp. at p.2; App. 18; see Mot. Reconsider at ¶ 5 (including a still frame from the dash camera video showing the registration plate to be

obscured and illegible); App. 27. The defense exhibit provides little to the analysis on the validity of the traffic stop, and it should not overcome the evidence of the trooper's observations from the actual time and location of the stop.

Second, Griffin argues the "Iowa Supreme Court considered section 312.38" and "[i]f a tinted plate cover constitutes 'foreign material' under the Code, then the *Tyler* Court certainly had the opportunity to reach that conclusion . . . ." Appellee's Br. at p.10. Griffin is mistaken.

As discussed in the State's initial brief, the Iowa Supreme Court in *State v. Tyler* specifically noted any argument relating to Iowa Code section 321.38 in that case was unpreserved. 830 N.W.2d 288, 295 (Iowa 2013). The Court's brief discussion of the State's argument was dictum. Even if it were not, the State offers a different argument here.

To the extent the *Tyler* opinion addressed section 321.38, such discussion was dictum. There, the Court noted the State's argument on section 321.38 had neither been raised nor decided in the district court. The Court merely noted the lack of evidence supporting the State's unpreserved assertion. The Court's brief discussion rejecting

the unpreserved argument in *Tyler* was not essential to the outcome. *See Boyles v. Cora*, 6 N.W.2d 401, 413 (Iowa 1942) (defining dictum as “passing expressions of the court, wholly unnecessary to the decision of the matters before the court”). As such, it cannot control the question here. *See Brady v. Welsh*, 204 N.W. 235, 237 (Iowa 1925) (observing even if prior statement is correct expression of the Court, if it is dictum then it is not binding).

Additionally, the Court’s discussion involved an entirely different question than that presented here. The Court in *Tyler* acknowledged the State had argued for the first time on appeal that “ ‘the plate cover could have had a light coat of dust, mud or snow so as to render Tyler’s plate unreadable from an angle or from a distance,’ in violation of Iowa Code section 312.38.” *Id.* But here, the State is not advancing such an argument—i.e., that there was an unrelated foreign material such as dust or snow obscuring the plate—and the brief discussion in *Tyler* is not on point.

Instead, it is the State’s position here that an object added to a vehicle, such as a heavily tinted license plate cover, a large bike rack, or an obtrusive trailer hitch, can itself constitute a foreign material. And when such an object obscures a registration plate, rendering it

illegible, there is a violation of section 321.38. Unlike in *Tyler*, the State's argument here was presented in the district court, and it was addressed again in the State's initial brief. *See* Resistance to Supp. at p.2; Mot. Reconsider at ¶ 3 ("The 'very, very dark' tinted cover constituted a foreign material that left the license plate in a condition that rendered it illegible."); App. 13, 26; *see also* Appellant's Br. at pp.15–16, 21. Because *Tyler* did not address this argument, the opinion is not controlling. This Court should find the tinted cover constituted a foreign material and violated section 321.38.

### **CONCLUSION**

This Court should reverse the district court's grant of Griffin's motion to suppress evidence.

Respectfully submitted,

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## 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 **1,607** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: January 11, 2023



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