

IN THE SUPREME COURT OF IOWA

Supreme Court No. 21-1133
Worth County No. SRCR011821

STATE OF IOWA,

Plaintiff-Appellee,

v.

STEPHEN ANDREW ARRIETA,

Defendant-Appellant.

Appeal from the Iowa District Court for Worth County
The Honorable Colleen Weiland, Judge (Suppression Ruling)
The Honorable DeDra Schroeder, Judge (Trial and Sentencing)

APPELLANT'S FINAL REPLY BRIEF

GOURLEY REHKEMPER LINDHOLM, P.L.C.

440 Fairway, Suite 210

West Des Moines, Iowa 50266

T: (515) 226-0500

F: (515) 244-2914

E-mail: ccmurphy@grllaw.com

By: /s/ Colin Murphy AT0005567

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

	Page
Table of Contents	2
Table of Authorities	3
Statement of the Issues Presented for Review	4
Argument.....	5
I. TROOPER WAALKENS HAS NO AUTHORITY TO SEARCH THE PASSENGER COMPARTMENT OF THE TRUCK DURING A LEVEL III INSPECTION	5
Conclusion	9
Certificate of Compliance with Requirements.....	10
Cost Certificate/ Proof of Service and Certificate of Filing	10

TABLE OF AUTHORITIES

	Page
<u>Cases:</u>	
<i>State v. Steward</i> , 2001 WL 98397 (Iowa App. Feb. 7, 2001)	6-8
<i>United States v. Knight</i> , 306 F.3d 534 (8 th Cir. 2002).....	7, 8
<i>United States v. Rendon</i> , 462 Fed. Appx. 923, 2012 WL 95097 (11 th Cir. Mar. 22, 2012).....	9
<i>United States v. Rodriguez-Alejandro</i> , 664 F. Supp. 2d 1320 (N.D. Ga. 2009)	8
<u>Statutes:</u>	
Iowa Code § 321.492 (2019)	5
<u>Federal Regulations:</u>	
49 C.F.R. § 382.213.....	7

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. TROOPER WAALKENS HAS NO AUTHORITY TO SEARCH THE PASSENGER COMPARTMENT OF THE TRUCK DURING A LEVEL III INSPECTION.

Cases:

State v. Steward, 2001 WL 98397 (Iowa App. Feb. 7, 2001)

United States v. Knight, 306 F.3d 534 (8th Cir. 2002)

United States v. Rendon, 462 Fed. Appx. 923, 2012 WL 95097
(11th Cir. Mar. 22, 2012)

United States v. Rodriguez-Alejandro, 664 F. Supp. 2d 1320
(N.D. Ga. 2009)

Statutes:

Iowa Code § 321.492 (2019)

Federal Regulations:

49 C.F.R. § 382.213

ARGUMENT

I. TROOPER WAALKENS HAS NO AUTHORITY TO SEARCH THE PASSENGER COMPARTMENT OF THE TRUCK DURING A LEVEL III INSPECTION.

Legal Authorities. Iowa law authorizes a peace officer to “inspect the condition of the vehicle,” “inspect the vehicle with reference to size, weight, cargo, log book, bills of lading or another manifest of employment, tires and safety equipment” or to “inspect the registration certificate, the compensation certificate, travel order, or permit of the vehicle.” Iowa Code § 321.492 (2019).

To this end, Officer Waalkens conducts a Level III Driver/Credential inspection. That is essentially a driver-only inspection. The purpose is to review paperwork and other documents that the federal government regulates in the trucking industry.¹ A Level III inspection does not authorize a search of the sleeper area of the tractor or closed containers located there.² Waalkens never testified that he had a change-of-mind and decided instead to upgrade his inspection to Level II.

¹ “An examination that includes those items specified under the North American Standard Level III Driver/Credential/Administrative Inspection Procedure. As [sic] a minimum, Level III Inspections must include, *where required and/or applicable*: examination of the driver’s license; Medical Examiner’s Certificate and Skill Performance Evaluation (SPE) Certificate; driver’s record of duty status; hours of service; seat belt; vehicle inspection report(s); and carrier identification and status.” See <https://www.cvsa.org/inspections/all-inspection-levels/> (emphasis added).

Iowa Code section 321.492 authorizes an inspection of driver credentials and *cargo*, presumably in the trailer. It does not authorize an inspection of the tractor cab or its contents beyond “safety equipment” such as the aforementioned seat belt.

² Officer Waalkens “climbed into the sleeper area and observed a 2 ft. by 1 ft. bag on the mattress. [He] opened the bag and observed a blue container [He] opened the container and observed a green leafy substance that looked and smelt like marijuana.” See Secure Attachment to Minutes of Testimony filed with EDMS on August 24, 2020.

Appellant contends there may be no evidence in the record that he is certified to conduct Level II inspections.

The State appears to posit that the unreported Iowa Court of Appeals decision in *State v. Steward*, 2001 WL 98397 (Iowa App. Feb. 7, 2001), and the federal regulations cited therein authorize Waalkens to conduct a warrantless, regulatory inspection of the entire passenger compartment and, essentially, any closed containers. *See* Appellee’s Br. at 13. As an unpublished decision, *Steward* lacks precedential value. More importantly, however, a careful reading of the opinion demonstrates that *Steward* may have been wrongly decided and altogether distinguishable from the present case.

In *Steward*, the Iowa Court of Appeals asserted that section 321.492 allows a general search of the entire tractor-trailer rig. *Id.* at *2. That is not what the plain language of the statute permits. The scope of regulatory inspections under the statute is limited to safety concerns, *i.e.*, road worthiness, size, weight, secure cargo and proper documentation.³ Searching the passenger compartment does not further the regulatory scheme. Searching the contents of a container found inside a closed bag in the sleeper compartment likewise has nothing to do with safety.

³ “Federal regulations make it clear the inspections are limited in scope to *safety concerns*. They do not authorize a general search by law enforcement.” *United States v. Steed*, 548 F.3d 961, 972 (11th Cir. 2008) (quoting *V-1 Oil Co. v. Means*, 94 F.3d 1420, 1427 (10th Cir. 1996)) (emphasis added).

The opinion also contends that 49 C.F.R. § 382.213 provides additional authority to search for controlled substances inside the truck. *Id.* That regulation only prohibits, however, reporting for duty or remaining on duty when the driver uses a federally scheduled controlled substance.⁴ It does not concern possession while on duty nor does it specifically authorize a search of the cabin interior.

Furthermore, the decision does not mention the applicable inspection level. This matter concerns a Level III inspection, which was chosen by the officer. Perhaps there was a higher inspection level triggered by the trooper in *Steward*, but the opinion is silent on that important fact. To the extent that may have been a Level I or II inspection involved, the limited authority in *Steward* is distinguishable.

Finally, there is published authority from the Eighth Circuit squarely opposed to *Steward* and the use of Level III inspections in Iowa to search personal property inside the truck. *See United States v. Knight*, 306 F.3d 534 (8th Cir. 2002), *reh'g and reh'g en banc denied* Dec. 19, 2002 (noting an Iowa State Patrol trooper stopped a

⁴ 49 CFR section 382.213 provides:

(a) No driver shall report for duty or remain on duty requiring the performance of safety sensitive functions when the driver uses any drug or substance identified in 21 CFR 1308.11 Schedule I.

(b) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1308 except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in § 382.107, who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

(c) No employer having actual knowledge that a driver has used a controlled substance shall permit the driver to perform or continue to perform a safety-sensitive function.

(d) An employer may require a driver to inform the employer of any therapeutic drug use.

vehicle for having a radar detector and conducted a Level III inspection)(deciding regulatory statute does not provide probable cause to search passenger compartment or briefcase)(concluding rummaging through a person’s belongings is more likely to serve the purpose of “crime control” than the enforcement of a regulatory scheme and is justified *only* by a valid warrant or supported by probable cause).⁵ Not surprising, the *Knight* court neither mentions nor addresses *Steward* in the ruling.

The takeaway from *Knight* cannot be clearer. Inspections authorized by federal regulations and adopted by the states are limited to matters involving tractor-trailer safety. Searches are allowed for a specific purpose and the discretion of the inspecting officer is circumscribed. Probable cause is not needed to initiate a Level III inspection. However, should the officer wish to go beyond what the inspection permits and search a closed container in the sleeper cabin without a warrant, then probable cause or some other well-recognized exception to the warrant requirement is needed. *See, e.g., United States v. Rodriguez-Alejandro*, 664 F. Supp. 2d 1320, 1337-38 (N.D. Ga. 2009) (noting law enforcement was authorized to inspect the bill of lading and logbook; the subsequent search of the vehicle and suitcase was based on consent, which is one of the well-established exceptions to the probable cause

⁵ Appellant acknowledges that the *Knight* opinion references Level III guidelines that authorize an officer to “[c]heck the cab for possible illegal presence of alcohol, drugs, weapons or other contraband.” *See United States v. Knight*, 306 F.3d at 535. Perhaps those guidelines have since changed since 2002 because a cabin search does not appear to be authorized currently for Level III. *See supra* fn. 1. In any event, the search of personal belongings exceeded whatever authority was vested in the trooper then. The same would hold true today under *Knight*.

and warrant requirements); *United States v. Rendon*, 462 Fed. Appx. 923, 925, 2012 WL 95097 *1 (11th Cir. Mar. 22, 2012)(holding interior search of tractor-trailer by officers during commercial vehicle inspection was unlawful because consent was coerced and not voluntarily given; probable cause search based on K9 alert upheld).

CONCLUSION

Office Waalkens impermissibly extended the duration of his Level III inspection so that Chief Deputy Luther could run his K9 around the exterior of the Appellant's truck and provide him with probable cause to search the passenger compartment. Deputy Luther illegally trespassed on the truck by touching the vehicle's exterior and actively encouraged the K9 to jump onto the frame to get closer to the seams. He cued the dog to "alert" during the second detailing pass. There is no valid probable cause to search the passenger compartment of the commercial motor vehicle. Under the circumstances, any contraband seized should be suppressed.

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

This brief complied with the type-volume limitations of Iowa R. App. P. 6.903(1)(g)(1) because the brief contains 1,917 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1). The brief further complied with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because the brief has been prepared in a proportionally spaced typeface using Times New Roman in size 14 font.

ATTORNEY'S COST CERTIFICATE

I, Colin Murphy, attorney for the Appellant, hereby certify that the actual cost of reproducing the necessary copies of this Brief was \$0.00 and that amount has been paid in full by me.

PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on the 31st day of May, 2022 I served this document by serving copies to Criminal Appeals Division, Attorney General of Iowa, Hoover Building, Des Moines, Iowa 50319 by way of electronic filing.

I further certify that on the 31st day of May, 2022 I filed this document by electronically filing the same with the Clerk of the Iowa Supreme Court, Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50319.

Respectfully submitted,

GOURLEY REHKEMPER LINDHOLM, P.L.C.

440 Fairway, Suite 210

West Des Moines, Iowa 50266

T: (515) 226-0500

F: (515) 244-2914

E-mail: ccmurphy@grllaw.com

By: /s/ Colin Murphy AT0005567

ATTORNEY FOR APPELLANT