IN THE SUPREME COURT OF IOWA

Supreme Court No. 23-1075
Madison County No. SRCR109847

STATE OF IOWA,

Plaintiff-Appellee,

v.

ASHLEE MUMFORD,

Defendant-Appellant.

Appeal from the Iowa District Court for Madison County
The Honorable Kevin Parker, Judge (Suppression Ruling)
The Honorable Erica Crisp, Judge (Trial and Sentencing)

APPELLANT'S FINAL BRIEF AND REQUEST FOR ORAL ARGUMENT

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Cases:

State v. Smith, 753 N.W.2d 562 (Iowa 2008)
State v. Flanagan, 2021 WL 45932222 (Iowa App. Oct. 6, 2021)

Court Rules:

Iowa Rules of Criminal Procedure 2.24(3)(c)

STATEMENT OF THE CASE

Nature of the Case, Course of Proceedings and Disposition of the Case in the District Court

Appellant challenges the district court's ruling on her motion to suppress that held: (1) the officer had probable cause to stop Appellant's vehicle; and (2) the drug K9 did not trespass onto Appellant's vehicle for purposes of obtaining information. Ruling on Motion to Suppress; Findings of Fact, Conclusions of Law, and Order. App. A012-A024; App. A023-A024 Appellant also challenges the ruling on her Motion in Arrest of Judgment that the State failed to provide sufficient proof beyond a reasonable doubt at trial that she possessed marijuana. Motion in Arrest of Judgment. App. A034-A040.

On March 12, 2022, the State files a Trial Information charging Appellant in Count I with Possession of a Controlled Substance – Methamphetamine in violation of Iowa Code section 124.401(5) and in Count II with Possession of Marijuana in violation of the same section following a warrantless search of a motor vehicle she was operating on March 5, 2022. Trial Information. App. A001-A002. Appellant enters a plea of not guilty by way of a Written Arraignment and is arraigned on March 28, 2022. Written Arraignment and Plea of Not Guilty; Order of Arraignment. A.008-A010; A011-A013.

On May 3, 2022, Appellant files a motion to suppress challenging among other things the stop and subsequent search. Motion to Suppress. App. A014-A018.

The district court hears testimony and receives exhibits regarding the Motion to Suppress on June 6, 2022. On October 8, 2022, the district court denies Appellant's arguments regarding the stop and search but did not rule on her claim of trespass by the drug K9, which was allowed by the handler to place its paws on the door frame and stick its nose through the open window into the passenger compartment of the vehicle immediately before alerting. Ruling on Motion to Suppress. App. A019-A021. Appellant timely moved to enlarge the order for additional findings and conclusions on October 13, 2022. Motion to Enlarge Order. App. A022. The district court relied on an expectation of privacy analysis to deny Appellant's motion on October 20, 2022. Findings of Fact, Conclusions of Law and Order. App. A023-A024.

On January 31, 2023, Appellant waives her right to a one-year speedy trial. Waiver of Speedy Trial. App. A025. The matter proceeds to a bench trial on March 27, 2023. On April 24, 2023, the district court finds Appellant not guilty of Count I, but guilty as to Count II. Trial to the Court, Findings of Fact, Conclusions of Law and Verdict. App. A026-A033. Appellant files a Motion in Arrest of Judgment as to Count II on May 4, 2023. Motion in Arrest of Judgment. App. A034-A040. On June 8, 2023, the district court denies the Motion in Arrest of Judgment. Other

Order. App. A041-A043. Appellant is sentenced on June 9, 2023. Judgment and Sentence. App. A044-A047. She timely files a Notice of Appeal on July 7, 2023. Notice of Appeal. App. A048.

Statement of the Facts

On March 5, 2020, Winterset Police Officer Logan Camp stops a vehicle driven by Appellant for an obscured license plate. The officer had previously observed the vehicle parked in the driveway of a residence of interest to law enforcement. Once the vehicle was stopped Officer Camp was eventually able to read all the numbers and letters on the registration plate once he was out of his vehicle. Motion to Suppress Hearing Transcript.

At some point prior to the stop, Office Camp requests assistance from Winterset Police Officer Christian Dekker, the department's K9 handler. He reaches him by cell phone, which keeps the communication off the official police dispatch radio. Motion to Suppress Hearing Transcript at 68.

Dekker can command the dog to heel. He can also command it to stop doing an activity. Motion to Suppress Hearing Transcript at 66-67. He controls the dog with a leash and can direct the dog what to do as well as what not to do. *Id.* at 75, 81. Dekker allows the dog to contact the driver's side of the vehicle by placing his paws on it. *Id.* at 76-77. He admits that he can shorten the leash to prevent the dog

from contacting the car. *Id*. at 77. He allows him to make physical contact. *Id*. at 78-79. He does not correct the behavior of touching the vehicle. *Id*. at 81.

Dekker admits that he allowed the dog to insert his nose through the open passenger side window. Dekker claims that the dog alerted to the presence of narcotics while in the window – his "high final" – and eventually proceeded to a "sitting final" by sitting down at the passenger door. *Id*. at 82-83, 84-85. The officers relied on Orozco's alert to conduct a warrantless search of the vehicle.

At trial, the State produced no expert opinion or forensic lab results that the substance seized from Appellant was marijuana. Appellant alerted the district court to this fact both in a Motion for Judgment of Acquittal and Motion in Arrest of Judgment. These were either denied or overruled.

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court pursuant to Iowa R. App. P. 6.1101(2) because the case presents the same substantial issue of first impression, namely the extension of the trespass doctrine announced in *State v. Wright*, 961 N.W.2d 396 (Iowa 2021) to K9 searches under the Iowa Constitution, that was argued in September 2023 in *State v. Arrieta*, No. 21-1133, as well as fundamental issues of broad public importance requiring prompt or ultimate determination by the Supreme Court and substantial questions of enunciating or changing legal principles.

ARGUMENT

I. OFFICER CAMP DID NOT HAVE PROBABLE CAUSE TO STOP THE VEHICLE DUE TO A VIOLATION OF IOWA CODE SECTION 321.38.

PRESERVATION OF ERROR / STANDARD OF REVIEW: Appellant preserved error on this issue by timely filing a Motion to Suppress Evidence and timely filing a Notice of Appeal following sentencing. It is well established that the Supreme Court's review of constitutional issues is de novo. *See State v. Lyman*, 776 N.W.2d 865, 873 (Iowa 2010).

Legal Authorities. Iowa Code section 321.38 provides:

> Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so as to prevent the plate from swinging and at a height of not less than twelve inches from the ground, measuring from the bottom of the plate, in a place and position to be clearly visible and *shall be maintained free from foreign materials and in a condition to be clearly legible*. An imitation plate or plates imitating or purporting to imitate the official registration plate of any other state or territory of the United States or of any foreign government shall not be fastened to the vehicle.

Iowa Code § 321.38 (Iowa 2023) (emphasis added). Officer Camp relied on this code section to stop the vehicle. The "clearly legible" requirement goes to the plate's upkeep. *State v. Paye*, 2022 WL 1234160 *4 (Iowa App. Apr. 27, 2002) *vacated by State v. Paye*, 2022 WL 16841998 (Iowa Nov. 10, 2022).

Analysis. Officer Camp alleges he could not read the registration plate on Appellant's vehicle due to an accumulation of dust. However, his testimony is not corroborated by the record in this case. The district court was alerted to the fact that any visual confirmation of the legibility of the registration plate appears to have been

excised from his dash camera video (Exhibit B). Other than intentional manipulation of evidence, nothing else explains how a video skips back and forth in time during the critical period when the officer approaches the vehicle such that the registration plate comes into view during the stop? However, there is a single frame (Exhibit A) from his body camera (Exhibit C) that shows the numbers and letters on the plate, LGK868, when Officer Camp is facing the vehicle as the search is underway. The information on the printed plate is legible even with the glare of his headlights illuminating the rear of the vehicle. At a minimum, this would have been his view from the patrol vehicle at the time of the stop. One does not need to be a cryptologist to decipher the information on the plate. It is clearly legible.

At the point when he observes the registration plate information after the vehicles come to a stop, there was no longer any authority to continue to detain Appellant for any investigation. The traffic stop was over. There is no basis to approach her, engage her in conversation, request documentation such as her driver's license, registration or proof of insurance or issue her a warning. Appellant was free to go about her business. The officer should have simply waived her on. *See State v. Coleman*, 890 N.W.2d 284, 301 (Iowa 2017) (holding "when the reason for the traffic stop is resolved and there is no other basis for reasonable suspicion, article 1, section 8 of the Iowa Constitution required that the driver must be allowed to go his or her way without further ado") (reasonable suspicion to further detain vehicle

ended when upon approach officer observed gender of driver did not match gender of registered owner, who had a suspended driver's license).

However, Officer Camp continued with the traffic stop instead and called for a K9 to survey the vehicle. The fact that he issued a written warning for the purported violation of section 321.38 rather than a citation, which would have required him to instead verify the information under oath, coupled with the obvious issue with the dash camera video, demonstrate a pretextual traffic stop more likely based solely on the vehicle being parked outside of a residence of questionable repute.

II. THE DRUG K9 AND HANDLER BOTH DELIBERATELY MADE PHYSICAL CONTACT WITH APPELLANT'S VEHICLE BEYOND A "FREE AIR SNIFF" FOR THE PURPOSES OF DISCOVERING INFORMATION ABOUT THE CONTENTS.

PRESERVATION OF ERROR / STANDARD OF REVIEW: Appellant preserved error on this issue by timely filing a Motion to Suppress Evidence, a timely Motion to Enlarge Order for Additional Findings and Conclusions and timely filing a Notice of Appeal following sentencing. It is well established that the Supreme Court's review of constitutional issues is de novo. *See State v. Lyman*, 776 N.W.2d 865, 873 (Iowa 2010).

Legal Authorities. "A trespass on 'houses' or 'effects' is a Fourth Amendment search if the goal of the trespass is to obtain information." *United States v. Jones*, 565 U.S. 400, 408 n.5, 132 S. Ct. 945, 951 n.5, 952, 181 L. Ed. 2d 9111 (2012) (deciding a vehicle is an "effect" for Fourth Amendment purposes).

In holding there was an illegal search of the vehicle, the *Jones* Court reminds litigants that it is significant for Fourth Amendment purposes whether there is a physical intrusion by the government on a constitutionally protected area, *i.e*., "persons, houses, papers and effects," for purposes of obtaining information. When that occurs, the trespass alone amounts to a warrantless search in violation of the Fourth Amendment. While later cases, particularly *Katz*, deviated from that exclusively property-based approach, they did not repudiate it. *Id*. at 406-07. We only look to an individual's expectation of privacy under *Katz* where a classic trespassory search is *not* involved. *Id*. at 412-413.

The Iowa Supreme Court has since held that "a peace officer engaged in general criminal investigation acts unreasonably under article 1, section 8 when the peace officer commits a trespass against a citizen's hose, papers or effects without first obtaining a warrant . . . ." *See State v. Wright*, 961 N.W.2d 396, 412 (Iowa 2021) (applying trespass doctrine to refuse set out for curbside collection). "A constitutional search occurs whenever the government commits a physical trespass against property, even where de minimis, conjoined with 'an attempt to find something or obtain information.'" *Id*. at 413 (quoting *Jones*, 565 U.S. at 408 n.5, 132 S. Ct. at 951 n.5).

A Fourth Amendment search occurs when a drug dog jumps onto a vehicle door and plants the front paws on the door to sniff the upper seams of the vehicle to

obtain information. *State v. Dorff*, 171 Idaho 818, 526 P.3d 988, 999 (Id. 2023) (citing *Jones*).

Analysis. The K9 team is only entitled to a "free air sniff" of the vehicle. *See State v. Bergmann*, 633 N.W.2d 328, 334 (Iowa 2001) (noting an exterior sniff of an automobile does not require entry into the car) (noting a sniff by a dog that simply walks around a car is "much less intrusive than a typical search") (quoting *United States v. Place*, 462 U.S. 696, 707, 103 S. Ct. 2637, 2644, 77 L. Ed. 2d 110, 121 (1983*)); see also City of Indianapolis v. Edmond*, 531 U.S.32, 40, 121 S. Ct. 447, 148 L.Ed.2d 333 (2000) (same).

However, in this instance, Officer Dekker allowed Orozco to twice jump up on the vehicle. During the second instance, he permitted Orozco to place his nose inside the open passenger window. The dog immediately alerted after breaking the plane of the window. The entire purpose of that maneuver is an attempt to obtain information about odors that he is purportedly trained to detect. Orozco cannot breach the threshold of the open window without making direct physical contact with the vehicle.

In *State v. George*, 2016 WL 6636750 (Iowa App. Nov. 9, 2016), the Iowa Court of Appeals confronted the issue of a dog jumping into a vehicle during such a search. The *George* Court held this was not unconstitutional because the dog's actions were instinctive. The single most important factor in the analysis, however,

was the finding that the dog *was not directed* into the vehicle by the handler. *Id.* at *4-5.[1] The *George* Court quoted the Supreme Court of North Carolina for the following principle:

> If a police dog is acting without assistance, facilitation, or other intentional action by its handler (in the words of *Sharp* [689-20] acting "instinctively"), it cannot be said that a State or governmental actor intends to do anything. In such a case, the dog is simply being a dog. If, however, police misconduct is present, or if the dog is acting at the direction or guidance of its handler, then it can be readily inferred from the dog's action that there is an intent to find something or to obtain information. *See [United States v.] Winningham*¸140 F.3d 1328, 1330-31 [(10th Cir. 1998)] (invalidating a search on such grounds). In short, we hold that police dog's instinctive action, unguided and undirected by the police, that brings evidence not otherwise in plain view into plain view is not a search within the meaning of the Fourth Amendment.

Id. at *5-6 (quoting *State v. Miller*, 766 S.E.2d 289, 296 (N.C. 2014)).

That is exactly what was before the Iowa Supreme Court in *State v. Arrieta*, No. 21-1133. The only difference between the two cases is the handler in Arrieta was directing the dog to jump onto the vehicle at time when *Wright* was not yet decided. In this instance, however, *Wright* was already settled law, and Officer Dekker did nothing to prevent his leashed K9 from contacting the car and searching the passenger compartment through the open window. He had the ability to both restrict the dog from reaching the window in the first place as well as command it to stop touching the vehicle after the dog first made contact on the driver's side.

[1.] The *Jones* trespass analysis was not applied in *George*. It is unclear whether trespass was ever raised before the district court or the Court of Appeals.

Although the K9's presence on the passenger door frame was brief, such that it may be considered de minimis contact, it still amounts to a trespass, nevertheless. It is no longer a "free air sniff." The K9 illegally searched the interior of the passenger compartment immediately before he alerted.

The obvious purpose of allowing the K9 to jump onto the window frame was to discover information about what may be inside the passenger compartment. The K9 physically intruded onto a constitutional effect in the process. Orozco is an extension of Officer Dekker. This amounts to a physical trespass under *Jones*, *Wright* and *Dorff*, which is in effect, a warrantless search without probable cause.

This conduct also constitutes a statutory trespass under Iowa Code section 716.7. A "vehicle" is considered "property." Iowa Code § 716.7(1)(a) (2023). Under subsection (2)(a)(4), a person commits a trespass by placing an animate object upon another's property without the implied or actual permission of the owner or person in lawful possession. So, by placing a K9 on Appellant's vehicle without her permission, Officer Dekker commits a trespass.

Because there was no reasonable suspicion or probable cause that the vehicle contained contraband, this is *per se* unreasonable police conduct under both the Fourth Amendment and article 1, section 8 of the Iowa Constitution. All evidence must be suppressed as a result.

III. THE CONVICTION FOR POSSESSION OF MARIJUANA IS NOT SUPPORTED BY SUFFICIENT EVIDENCE.

PRESERVATION OF ERROR / STANDARD OF REVIEW: Appellant preserved error on this issue by moving for judgment of acquittal with specificity that the State failed to prove the elements of Count II as charged, namely that there was insufficient evidence that the alleged controlled substance was marijuana, as well as a timely Notice of Appeal. *State v. Truesdell*, 679 N.W.2d 611, 615 (Iowa 2004); Iowa R. Crim. P. 2.19(8).

Regarding the identification of the green, leafy substance seized from Appellant's purse, the trial court found the substance was marijuana beyond a reasonable doubt based solely on the testimony of officers.

The State did not offer in evidence any presumptive field test results, macro and microscopic examination by a marijuana identification officer or confirmatory forensic analysis by a criminalist from the state criminalistics laboratory that established the substance as marijuana.

A guilty plea to the charge of possession of a controlled substance lacks a factual basis where there is no evidence establishing the substance tested positive for a controlled substance. *See, e.g., State v. Fuller*, 2018 WL 3471096 (Iowa App. Jul. 18, 2018)(no lab report in minutes of testimony upon which the defendant relied to plead guilty to possession)("[w]ithout the lab report, the evidence only supports a suspicion of a controlled substance with no factual or evidentiary confirmation")("[i]n short the State failed to enter into the record facts establishing

the substance found . . . tested positive as a controlled substance")(vacating sentence and remanding for further proceedings to supplement the record with a factual basis); *see also State v. Watson*, 2019 WL 2153099 (Iowa App. May 15, 2019)(noting the lack of a lab report is immaterial where the minutes indicate a "criminalist" would testify that she "analyzed this evidence" and "found the material to be methamphetamine, a schedule II controlled substance").

In a stipulated trial on the minutes, presumptive field tests coupled with other evidence can provide sufficient evidence to allow a reasonable factfinder to conclude beyond a reasonable doubt that the driver possessed methamphetamine. *See, e.g., State v. Pettyjohn*, 2018 WL 3650335 (Iowa App. Aug. 1, 2018)(noting observations of usual and frantic behavior, clues of impairment on standard field sobriety tests, a PBT test of 0.001, along with attempts to tamper with a urine specimen, coupled with the seizure of a snort tube, hypodermic needles and a baggie containing a white crystalline substance, secreted in part of an ink pen, which field tested positive for methamphetamine amounted to proof).

Iowa recognizes that the State is not required to test the purported drug to sustain a conviction. *See In the Interest of C.T.*, 521 N.W.2d 754, 757 (Iowa 1994)(adjudicating juvenile as delinquent based on criminal gang participation involving among other things narcotics trafficking)(noting juvenile failed to object to police testimony that juvenile and other gang members appeared to be dealing

drugs despite fact that no arrests were made or substances seized and tested). In that case, the juvenile was not actually charged with a possession offense. And the failure to object to officer's testimony meant there was sufficient evidence in the record to support a finding that he was delivering a controlled substance for purposes of satisfying the requirement that he committed the act of criminal gang participation.

However, *C.T.* does not stand for the proposition that the State a forensic lab test confirming the presence of a controlled substance is *never* required. The State can certainly proceed to trial without a forensic lab test, like it did here, but it runs the risk that whatever circumstantial evidence it introduces will fall far short of proof beyond a reasonable doubt that the substance is a drug or controlled substance.

When it comes to trial on actual possession offenses, however, reported decisions demonstrate that forensic testing is necessarily part of the possession calculus to establish proof beyond a reasonable doubt. *See State v. Brubaker*, 805 N.W.2d 164 (Iowa 2011)(reversing judgment for unlawful possession of a prescription drug in violation of Iowa Code section 155A.21 and remanding for dismissal)(noting "[t]he State chose not to have pills tested or call a qualified expert witness to testify that the pills were, in fact, Clonazepam")("no direct evidence that the pills found in Brubaker's vehicle were a prescription drug")(State relied on testimony of criminalist who said pills looked like Clonazepam and was a

prescription drug)(opining "[j]ust because a pill looks like Clonazepam does not mean it is Clonazepam")(concluding the criminalist's testimony "does not establish that the pills were Clonazepam")(finding "the jury was left to speculate as to whether the pills were Clonazepam and to rely on conjecture to reach a verdict of guilt")(discussing had trial counsel made the proper motion for acquittal based upon the State's failure to provide sufficient evidence to support the necessary element of the crime, "the court would have sustained the motion"); *see also State v. See*, 532 N.W.2d 166 (Iowa App. 1995) (concluding State met its burden of proof for possession with intent to deliver cocaine)(testimony by police officer that the substance field-tested positive for cocaine)(DCI lab report confirms cocaine); *see also State v. Sykes*, 412 N.W.2d 578, 584 (Iowa 1987) (noting trial court did not abuse its discretion in allowing testimony by veteran narcotics officer regarding practices of area drug traffickers and the identification of certain plant material as marijuana).

Like the comparison of unknown pills to Clonazepam in *Brubaker*, a witness testified here that the green leafy substance appears to be marijuana. That might be probable cause to support an arrest, but it is simply not enough for the State to meet the exacting burden of proof beyond a reasonable doubt to sustain a conviction. Appellant contends a field test alone would not even be sufficient here because it is not specific for marijuana, but there is not even a field test in this record. Just

because the substance looks like marijuana, does not mean it is marijuana.

Also, now that Iowa law excepts consumable hemp products from the definition of marijuana, it is necessary for law enforcement to separate the identification of marijuana from cannabis based on the percentage of Delta-9 THC. *See* Iowa Code §§ 124.204(4)(u)(2), 124.204(7)(a)-(b) (2023). A visual observation that plant material appears to be cannabis does not mean that it is marijuana. An officer cannot determine the concentration of Delta-9 THC by visual observation. That requires semi-quantitative instrumental testing to differentiate between marijuana, which contains more than 0.3% Delta-9 THC, and legal hemp.

Furthermore, raw hemp flower is legal to sell and possess in the state provided there is no intent to use it in a prohibited manner such as inhaling the smoke produced by combustion. Iowa Code § 204.14A (2023). Hemp flowers grown in Iowa and available for retail purchase are visually indistinguishable from marijuana. *See, e.g.*, https://www.fourwindsfarmhemp.com/product-page/raw-hemp-flower-1-8oz. The only difference between raw hemp and marijuana flower is the concentration of THC below the 0.3 percent threshold.

It is not Appellant's burden to prove the substance seized from Defendant's purse was not a controlled substance. *See* Ruling at 5 ("There is no evidence suggesting that the substance could possibly be identified as anything other than marijuana"). Rather, it is the State's burden to prove that the green plant material is

a controlled substance to the exclusion of anything else, including raw hemp flower. That is precisely why lab testing is necessary in this instance. Conjecture based on visual observation alone, which is the lesson of *Brubaker*, is wholly insufficient as a matter of law.

The Court in *Brubaker* reversed and remanded for a dismissal of the possession charge. The same should apply here based on the failure of proof at trial.

IV. THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING THE MOTION IN ARREST OF JUDGMENT REGARDING THE IDENTIFICATION OF MARIJUANA.

PRESERVATION OF ERROR / STANDARD OF REVIEW: Appellant preserved error on this issue by timely filing a Motion in Arrest of Judgment and Notice of Appeal. The Court reviews a denial of a Motion in Arrest of Judgment for abuse of discretion. *State v. Myers*, 653 N.W.2d 574, 581 (Iowa 2002).

Legal Authorities. A denial of a motion in arrest of judgment will be reversed only if the ruling was based on reasons that are clearly unreasonable or untenable. *State v. Smith*, 753 N.W.2d 562, 564 (Iowa 2008). "Such motion [for judgment of acquittal] *shall* be granted when upon the whole record no legal judgment can be pronounced" Iowa R. Crim. P. 2.24(3)(c) (emphasis added).

The reasons supporting the denial of the motion for judgment of acquittal are untenable. The Minutes of Testimony do not provide any mention of either officer's training or experience in identifying controlled substances. Nor do the Minutes state that either officer will offer an expert opinion regarding the identification of

controlled substances. Minutes of Testimony. App. A003-A007. Neither Officer Camp nor Officer Dekker were offered to testify in an expert capacity. Simply stipulating that an officer is a certified peace officer or a certified DRE is not a blanket waiver of their lack of professional qualifications to identify plant material as marijuana.

The Minutes do provide, however, that a designee from the DCI laboratory will testify about the analysis of evidence seized from Appellant. There was a report issued by the lab, but it did not contain any analysis of the green plant material.

The district court found that both officers "unequivocally testified" that the substance was marijuana. Appellant disputes that Officer Dekker identified any substance as marijuana at trial. Transcript of Proceedings. He was never asked. Transcript of Proceedings.

Officer Camp simply referred to material in Exhibit 2 as marijuana but was not asked to identify it or whether his training and experience enabled him to offer that opinion. Transcript of Proceedings. Neither officer claimed to detect the odor of marijuana before or during the search. Transcript of Proceedings.

Finally, it should be noted that drug recognition experts are used to detect *impairment* in drivers resulting from drugs other than alcohol. *See State v. Flanagan*, 2021 WL 45932222 fn. 8 (Iowa App. Oct. 6, 2021). They do not forensically identify suspected controlled substances for purposes of trial. The

district court's reliance on Officer Camp's DRE certification is unreasonable.

In the absence of any presumptive field test, forensic laboratory test or testimony by someone qualified as an expert in the identification of controlled substances, the district court abused its discretion in denying Appellant's Motion for Judgment of Acquittal as to Count II.

CONCLUSION

The district court erred in denying the Motion to Suppress. Police unlawfully stopped Appellant's vehicle. The drug K9 then trespassed onto Appellant's vehicle, a constitutionally protected "effect," in an attempt to discover information about the contents. All evidence of controlled substances and any other contraband discovered during the subsequent search must be suppressed as a result.

Also, there is insufficient evidence establishing beyond a reasonable doubt that the substance seized from Appellant's purse was marijuana to the exclusion of any other green plant material, including legal hemp flower. The district court erred in finding her guilty of Count II. In the event the stop and search are upheld, then the matter should be remanded to the district court for an entry of a verdict of not guilty on Count II.

Lastly, the district court abused its discretion in denying Appellant's Motion for Judgment of Acquittal. No legal judgment should be pronounced on this record

without qualified expert opinion testimony or confirmatory lab test results that identify the substance as marijuana.

REQUEST FOR ORAL ARGUMENT

Appellant hereby requests to be heard in oral argument upon submission of the case.

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 5,259 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 1st day of March, 2024 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 1st day of March, 2024 I filed this document by electronically filing the same with the Clerk of the Iowa Supreme Court, Judicial Branch Building, 1111East Court Avenue, Des Moines, Iowa 50319.

Respectfully submitted,

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