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IN THE SUPREME COURT OF IOWA
Supreme Court No. 23-1075
Madison County No. SRCR109847

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ASHLEE MUMFORD,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR MADISON COUNTY, THE HONORABLE KEVIN PARKER
(SUPPRESSION) & ERICA CRISP (BENCH TRIAL), JUDGES

APPELLEE'S BRIEF

BRENNA BIRD
Attorney General of Iowa

JOSHUA A. DUDEN
Assistant Attorney General
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319
(515) 281-5976
(515) 281-8894 (fax)
Joshua.Duden@ag.iowa.gov

ERIN HARDISTY
Madison County Attorney

SIERRA IVERSON
Assistant Madison County Attorney

ATTORNEYS FOR PLAINTIFF-APPELLEE FINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES 3

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW 9

ROUTING STATEMENT 14

STATEMENT OF THE CASE 14

ARGUMENT 20

I. Officer Camp's Decision to Stop Mumford's Vehicle was Reasonable After Because Her License Plate Information was Obstructed or Illegible. 20

II. The District Court Properly Declined to Suppress the Drugs Detected by the K9 Unit's Sniff that Occurred During the Scope of the Lawful Traffic Stop. 25

A. Precedent establishes that sniffs of a car's exterior are not Fourth Amendment "searches." 28

B. The common law trespass theory does not erode the caselaw approving of K9 sniffs like Orozco's. 37

C. *Wright* and the trespass test from *Jones* and *Jardines* seldom apply to traffic stop and canine sniff cases; to the extent *Wright* applies beyond one's house, it should not. 41

III. Sufficient Evidence Exists in the Record to Prove Mumford Possessed Marijuana. 55

IV. The Trial Court Correctly Rejected Mumford's Motion in Arrest of Judgment. 62

CONCLUSION 64

REQUEST FOR NONORAL SUBMISSION 64

CERTIFICATE OF COMPLIANCE 65

TABLE OF AUTHORITIES

Federal Cases

United States v. Jones, 565 U.S. 400 (2012) .. 36, 37, 38, 39, 40, 41, 52

Bd. of Regents of State Colls. v. Roth, 408 U.S. 564 (1972) 51

California v. Carney, 471 U.S. 386 (1985) 49

Carpenter v. United States, 138 S. Ct. 2206 (2018) 25, 28, 51

Carroll v. United States, 267 U.S. 132 (1925) 47, 48

Collins v. Virginia, 138 S. Ct. 1663 (2018) 49

Florida v. Jardines, 569 U.S. 1 (2013) 29, 38, 40, 42

Illinois v. Caballes, 543 U.S. 405 (2005) 28, 29, 35

Katz v. United States, 389 U.S. 347 (1967) 28

Moore v. Harper, 143 S. Ct. 2065 (2023) 51

South Dakota v. Opperman, 428 U.S. 364 (1976) 49

Taylor v. City of Saginaw, 922 F.3d 328 (6th Cir. 2021) 37

United States v. Buescher, Case No. 23-CR-4014-LTS,
2023 WL 5950124 (N.D. Iowa Sept. 2023) 33, 35

United States v. Cordero, No. 5:13–cr–166, 2014 WL 3513181
(D. Vt. July 14, 2014) 30

United States v. Guidry, 817 F.3d 997 (7th Cir. 2016) 31

United States v. Jacobsen, 466 U.S. 109 (1984) 28

United States v. Lyons, 486 F.3d 367 (8th Cir. 2007) 31

United States v. Moore, 795 F.3d 1224 (10th Cir. 2015) 33, 34

United States v. Mostowicz, No. 11-11900, 417 F. App’x 887
(11th Cir. 2012) 33

United States v. Olivera-Mendez, 484 F.3d 505 (8th Cir. 2007) 34, 35

United States v. Pierce, 622 F.3d 209 (3d Cir. 2010)........ 31

United States v. Place, 462 U.S. 696 (1983)........ 29

United States v. Pulido-Ayala, 892 F.3d 315 (8th Cir. 2018) 31

United States v. Rivera, 74 F.4th 134 (3d Cir. 2023)........ 59

United States v. Seybels, 526 F. App'x 857 (10th Cir. 2013)........ 30

United States v. Sharp, 689 F.3d 616 (6th Cir. 2012)........ 31, 32

United States v. Stone, 966 F.2d 359 (10th Cir. 1989)........ 31

United States v. Taylor, 978 F.Supp.2d 865 (S.D. Ind. 2013) 30

United States v. Vazquez, 555 F.3d 923 (10th Cir. 2009)........ 33

United States v. Winningham, 140 F.3d 1328 (10th Cir. 1998)........ 32

United States v. Winters, 782 F.3d 289 (6th Cir. 2015)........ 30

Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646 (1995) 42, 43, 44, 45, 46, 47

State Cases

DeVoss v. State, 648 N.W.2d 56 (Iowa 2002)........ 20

Griffin v. Pate, 884 N.W.2d 182 (Iowa 2016) 51

In re Pardee, 872 N.W.2d 384 (Iowa 2015) 20

In the Interest of C.T., 521 N.W.2d 754 (Iowa 1994)........ 56

Iowa Tel. Ass'n v. City of Hawarden, 589 N.W.2d 245 (Iowa 1999) 25

Lamasters v. State, 821 N.W.2d 856 (Iowa 2012) 20, 24

McGhee v. State, No. 22-0075, 2023 WL 3862172 (Iowa Ct. App. June 7, 2023) 62

State v. Bash, 670 N.W.2d 135 (Iowa 2003) 56

State v. Beames, 511 P.3d 1226 (Utah Ct. App. 2022) 33

State v. Bergmann, 633 N.W.2d 328 (Iowa 2001) 29, 34

State v. Booker, 989 N.W.2d 621 (Iowa 2023) 55

State v. Brown, 930 N.W.2d 840 (Iowa 2019) 20, 22, 24, 25, 26

State v. Brubaker, 805 N.W.2d 164 (Iowa 2011) 56, 57

State v. Buman, 955 N.W.2d 215 (Iowa 2021) 54

State v. Burns, 988 N.W.2d 352
(Iowa 2023) 25, 26, 28, 42, 43, 44, 50

State v. Campbell, 2024 WL 244336
(Wis. Ct. App. Jan. 23, 2024) 32

State v. Carson, 968 N.W.2d 922 (Iowa Ct. App. 2021) 35

State v. Chase, 335 N.W.2d 630 (Iowa 1983) 53

State v. Christopher, 757 N.W.2d 247 (Iowa 2008) 26

State v. Craig, 562 N.W.2d 633 (Iowa 1997) 61

State v. Crawford, 972 N.W.2d 189 (Iowa 2022) 54

State v. Dallen, 452 N.W.2d 398 (Iowa 1990) 61, 62, 63

State v. Dorff, 526 P.3d 988 (Idaho 2023) 35, 36

State v. Ernst, 954 N.W.2d 50 (Iowa 2021) 55

State v. Geddes, 998 N.W.2d 166 (Iowa 2023) 53

State v. George, No. 15-1736, 2016 WL 6636750
(Iowa Ct. App. Nov. 9, 2016) 31, 32, 33

State v. Griffin, 997 N.W.2d 416 (Iowa 2023) 21, 22, 23

State v. Haas, 930 N.W.2d 699 (Iowa 2019) 24

State v. Hague, 973 N.W.2d 453 (Iowa 2022) 20

State v. Hunt, 974 N.W.2d 493 (Iowa 2022)..................................... 35

State v. Jones, 967 N.W.2d 336 (Iowa 2021) 54, 55, 59

State v. Klinghammer, No. 09-0577, 2010 WL 200058
(Iowa Ct. App. Jan. 22, 2010) 23

State v. Kreps, 650 N.W.2d 636 (Iowa 2002) 21, 24

State v. McFadden, No. 16-1184, 2017 WL 4315047
(Iowa Ct. App. Sept. 27, 2017).. 22

State v. McIver, 858 N.W.2d 699 (Iowa 2015) 21

State v. Miller, 766 S.E.2d 289 (N.C. 2014) 32

State v. Miller, No. 02-0965, 2003 WL 22015974
(Iowa Ct. App. Aug. 27, 2003) 23

State v. Mong, 988 N.W.2d 305 (Iowa 2023) 54

State v. Neades, No. 20-1624, 2021 WL 5106498
(Iowa Ct. App. Nov. 3, 2021)... 56

State v. Oldfather, 306 N.W.2d 760 (Iowa 1981)........................ 62, 63

State v. Peden, No. 08-1039, 2009 WL 606236
(Iowa Ct. App. Mar. 11, 2009)... 23

State v. Petty, 925 N.W.2d 190 (Iowa 2019) 61

State v. Ruiz, 497 P.3d 832 (Utah Ct. App. 2021) 33

State v. Salcedo, 935 N.W.2d 572 (Iowa 2019) 21

State v. Slayton, 417 N.W.2d 432 (Iowa 1987).................................. 59

State v. Smith, 753 N.W.2d 562 (Iowa 2008) 61

State v. Stevens, 970 N.W.2d 598 (Iowa 2022) 31, 35

State v. Storm, 898 N.W.2d 140 (Iowa 2017) 31

State v. Tague, 676 N.W.2d 197 (Iowa 2004) 21, 25

State v. Tipton, 897 N.W.2d 653 (Iowa 2017) 55

State v. Torres, 495 N.W.2d 678 (Iowa 1993) 55

State v. Tyler, 830 N.W.2d 288 (Iowa 2013) 22

State v. Vance, 790 N.W.2d 775 (Iowa 2010) 20, 25

State v. Warren, 955 N.W.2d 848 (Iowa 2021) 21

State v. Weaver, 608 N.W.2d 797 (Iowa 2000) 55

State v. Wilson, 968 N.W.2d 903 (Iowa 2022) 30, 42

State v. Wright, 961 N.W.2d 396 (Iowa 2021) 26, 27, 30, 37, 38, 39, 40, 51, 52

State v. Young, 153 Iowa 4, 132 N.W. 813 (1911) 62

Federal Statutes

U.S. Const. amend. IV 21, 25

State Statutes

Iowa Code § 80B.11 58

Iowa Code § 204.7(8)(a) 59

Iowa Code § 321.38 .... 22, 24

Iowa Code § 716.7(2) 39, 40, 52

Iowa Code § 716.7(2)(a)(1) 53

Iowa Const. art. I, § 8 .... 25, 26, 32, 33

State Rules

Iowa R. Crim. P. 2.24(3)(a) 63

Iowa R. Crim. P. 2.24(3)(a)(c) 62

State Regulations

501 Iowa Admin. Code 3.1(1) (2022) 58

501 Iowa Admin. Code rr. 3.5, 3.6 58

641 Iowa Admin. Code r. 156.4 59

Other Authorities

Orinn Kerr, *The Curious History of Fourth Amendment Searches*, 2012 SUP. CT. REV. 67 (2012)..36

W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser & Keeton on Law of Torts* 87 (5th ed. 1984)...38, 40

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Thomas K. Clancy, *The Role of History*, 7 Ohio St. J. Crim. L. 811 (Spring 2010)..42

Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 606 (1999)...47

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I. Whether Officer Camp's Decision to Stop Mumford was Reasonable After Observing Her Vehicle's License Plate Information was Obstructed or Illegible.

Authorities

DeVoss v. State, 648 N.W.2d 56 (Iowa 2002)
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State v. Haas, 930 N.W.2d 699 (Iowa 2019)
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State v. Tague, 676 N.W.2d 197 (Iowa 2004)
State v. Tyler, 830 N.W.2d 288 (Iowa 2013)
State v. Vance, 790 N.W.2d 775 (Iowa 2010)
State v. Warren, 955 N.W.2d 848 (Iowa 2021)
U.S. Const. amend. IV
Iowa Code § 321.38
Iowa Const. art. I, § 8

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Moore v. Harper, 143 S. Ct. 2065 (2023)
South Dakota v. Opperman, 428 U.S. 364 (1976)
Taylor v. City of Saginaw, 922 F.3d 328 (6th Cir. 2021)
United States v. Buescher, Case No. 23-CR-4014-LTS, 2023 WL 5950124 (N.D. Iowa Sept. 2023)
United States v. Cordero, No. 5:13–cr–166, 2014 WL 3513181 (D. Vt. July 14, 2014)
United States v. Guidry, 817 F.3d 997 (7th Cir. 2016)
United States v. Jacobsen, 466 U.S. 109 (1984)
United States v. Lyons, 486 F.3d 367 (8th Cir. 2007)
United States v. Moore, 795 F.3d 1224 (10th Cir. 2015)
United States v. Mostowicz, No. 11-11900, 417 F. App'x 887 (11th Cir. 2012)
United States v. Olivera-Mendez, 484 F.3d 505 (8th Cir. 2007)
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United States v. Pulido-Ayala, 892 F.3d 315 (8th Cir. 2018)
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Griffin v. Pate, 884 N.W.2d 182 (Iowa 2016)
Iowa Tel. Ass'n v. City of Hawarden, 589 N.W.2d 245 (Iowa 1999)
Lamasters v. State, 821 N.W.2d 856 (Iowa 2012)
State v. Beames, 511 P.3d 1226 (Utah Ct. App. 2022)
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State v. Brown, 930 N.W.2d 840 (Iowa 2019)
State v. Burns, 988 N.W.2d 352 (Iowa 2023)
State v. Campbell, 2024 WL 244336 (Wis. Ct. App. Jan. 23, 2024)
State v. Carson, 968 N.W.2d 922 (Iowa Ct. App. 2021)
State v. Chase, 335 N.W.2d 630 (Iowa 1983)
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State v. Dorff, 526 P.3d 988 (Idaho 2023)
State v. Geddes, 998 N.W.2d 166 (Iowa 2023)
State v. George, No. 15-1736, 2016 WL 6636750 (Iowa Ct. App. Nov. 9, 2016)
State v. Hunt, 974 N.W.2d 493 (Iowa 2022)
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State v. Ruiz, 497 P.3d 832 (Utah Ct. App. 2021)
State v. Stevens, 970 N.W.2d 598 (Iowa 2022)
State v. Storm, 898 N.W.2d 140 (Iowa 2017)
State v. Tague, 676 N.W.2d 197 (Iowa 2004)
State v. Vance, 790 N.W.2d 775 (Iowa 2010)
State v. Wilson, 968 N.W.2d 903 (Iowa 2022)
State v. Wright, 961 N.W.2d 396 (Iowa 2021)
U.S. Const. amend. IV
Iowa Code § 716.7(2)
Iowa Code § 716.7(2)(a)(1)
Iowa Const. art. I, § 8
Orinn Kerr, *The Curious History of Fourth Amendment Searches*, 2012 SUP. CT. REV. 67 (2012)
W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser & Keeton on Law of Torts* 87 (5th ed. 1984)
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Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 606 (1999)

III. Whether Sufficient Evidence Exists to Support Finding Mumford Possessed Marijuana.

Authorities

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In the Interest of C.T., 521 N.W.2d 754 (Iowa 1994)
Iowa Tel. Ass'n v. City of Hawarden, 589 N.W.2d 245 (Iowa 1999)
State v. Jones, 967 N.W.2d 336 (Iowa 2021)
State v. Bash, 670 N.W.2d 135 (Iowa 2003)
State v. Booker, 989 N.W.2d 621 (Iowa 2023)
State v. Brubaker, 805 N.W.2d 164 (Iowa 2011)
State v. Buman, 955 N.W.2d 215 (Iowa 2021)
State v. Crawford, 972 N.W.2d 189 (Iowa 2022)
State v. Ernst, 954 N.W.2d 50 (Iowa 2021)
State v. Mong, 988 N.W.2d 305 (Iowa 2023)
State v. Neades, No. 20-1624, 2021 WL 5106498 (Iowa Ct. App. Nov. 3, 2021)
State v. Slayton, 417 N.W.2d 432 (Iowa 1987)
State v. Tipton, 897 N.W.2d 653 (Iowa 2017)
State v. Torres, 495 N.W.2d 678 (Iowa 1993)
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Iowa Code § 204.7(8)(a)
Iowa Code § 80B.11
501 Iowa Admin. Code 3.1(1) (2022)
501 Iowa Admin. Code rr. 3.5, 3.6
641 Iowa Admin. Code r. 156.4

IV. Whether the Trial Court Properly Denied Mumford's Motion in Arrest of Judgment after Concluding She Possessed Marijuana.

Authorities

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State v. Dallen, 452 N.W.2d 398 (Iowa 1990)
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State v. Petty, 925 N.W.2d 190 (Iowa 2019)
State v. Smith, 753 N.W.2d 562 (Iowa 2008)
State v. Young, 153 Iowa 4, 132 N.W. 813 (1911)
Iowa R. Crim. P. 2.24(3)(a)
Iowa R. Crim. P. 2.24(3)(a)(c)

ROUTING STATEMENT

The State agrees that retention is appropriate. The Court is now considering *State v. Bauler*, No. 22-1232, which presents similar issues to this appeal. But unlike in *Bauler*, this case presents a distinct "interior sniff" component of federal and state Fourth Amendment jurisprudence. Retaining this case would enable the Court to uniformly address whether the incidental touching and entry of a drug-dog's nose through an open window of a lawfully stopped car constitutes an unreasonable "trespass" in violation of the Fourth Amendment and article I, section 8. *See* Iowa R. App. P. 6.1101(2)(f).

STATEMENT OF THE CASE

Nature of the Case

Following a bench trial, the district court convicted Mumford of two counts: possession of marijuana—first offense, a serious misdemeanor under Iowa Code section 124.401(5)(b); and possession of drug paraphernalia, a simple misdemeanor under section 124.414. *See* D0092, Sent. Order (6/9/23) at 1–2; Conf. App. 44–45. The Honorable Kevin Parker denied Mumford's motion to suppress. D0046, Ruling Denying MTS (10/8/22) at 1–2; Conf. App. 19–20; *see* D0049, Order Enlarging Findings & Denying MTS (10/20/22); Conf. App. 23–24. And the Honorable Erica Crisp presided at trial. *See*

D0092, Sent. Order (6/9/23) at 1–2; Conf. App. 44–45; D0083, Findings of Fact, Conclusions of Law, & Verdict (4/24/23); Conf. App. 26–33.

Course of Proceedings

The State accepts Mumford's statement of this case's procedural history as adequate. *See* Iowa R. App. P. 6.903(3).

Facts

On March 5, 2022, City of Winterset Police Officer Logan Camp was patrolling when he saw a car parked at a house belonging to a man "involved in known drug activity." Suppr. Tr. 11:12–16, 26:19–27:1; Trial Tr. 4:16–18. Officer Camp noticed that the vehicle's license plate was covered "in dirt and grime," which made its last two digits unreadable even when illuminated by his headlights. Suppr. Tr. 12:4–15, 14:8–15, 29:21–30:5, 31:16–20. Still, Officer Camp drove away and kept patrolling—he did not "wait for the vehicle to leave the house." *Id.* at 13:2–8, 30:5–7.

Later, Officer Camp saw the same car driving. Suppr. Tr. 13:9–18, 30:5–23; Trial Tr. 4:16–5:7. So he drove to "catch up to it." Suppr. Tr. 13:9–18, 30:5–23. Like before, Officer Camp could not "read the plate from [a] couple-car-length[s]" away. *Id.* at 13:19–

14:15. The license plate was unreadable while Officer Camp drove behind it. *Id.* at 6:14–17, 15:2–11, 30:24–31:2. So he stopped the car "for failure to maintain [its] registration plate violation." *Id.* at 6:7–13; Trial Tr. 4:19–5:7; *see* D0046 at 1; Conf. App. 19. Around this time, Officer Camp also notified his partner, City of Winterset K9 Police Officer Christian Dekker, that he was stopping the vehicle, so Officer Dekker went to assist. *See* Suppr. Tr. 7:11–17, 19:2–20:22, 99:15–24, 101:11–14; Trial Tr. 5:20–6:5; *see also* D0046 at 1; Conf. App. 19.

As he "walked up to the car," Officer Camp could read the license plate's information, but only "[f]rom an angle" while "right up behind it with [his] flashlight." Suppr. Tr. 17:13–19, 18:6–15, 31:9–15; Suppr. Ex. C (Camp BC) at MM 1:18–1:24 (1:18:31–1:18:45 a.m.).

When he reached the driver's-side door, Mumford—who was identified as the driver—"wouldn't roll her window down or open [the door] initially." Suppr. Tr. 25:20–24. But, after several moments, Mumford opened the door to speak with him. *Id.* at 25:20–26:4; Suppr. Ex. C at MM 00:25–0:44 (1:17:45–1:18:05 a.m.). Officer Camp then identified Mumford's passenger, Shane Wells, as the car's owner. Suppr. Tr. 6:18–24, 7:22–24.

Officer Camp then asked for the documents needed to complete the stop, but Mumford and Wells "were unable to provide [proof of] insurance" for the car at first. Suppr. Tr. 6:18–7:24. So Officer Camp returned to his patrol car to start preparing the registration violation warning, and Wells kept looking for his proof of insurance. Suppr. Tr. 7:24–8:8, 53:4–13; Trial Tr. 6:6–11; Suppr. Ex. C at MM 3:28–7:40 (1:20:50–1:25:00 a.m.).

Soon after, Wells rolled down the passenger's-side window and signaled that he had found his insurance information. Suppr. Ex. C at MM 7:35–7:41 (1:20:52–1:25:58 a.m.). Officer Camp then walked back to the car and confirmed Wells had valid car insurance. Suppr. Tr. 8:9–22, 72:19–24, 101:8–10; Trial Tr. 6:6–11; Suppr. Ex. C at MM 7:41–8:24 (1:25:23–1:25:45 a.m.).

At some point, the officers had Orozco, Dekker's canine partner, perform a sniff around the car. M. Suppr. Tr. 8:15–22, 19:20–20:25, 22:5–11, 59:15–18, 101:8–10. But Orozco is a "dual-purpose," cross-trained, passive alert and apprehension canine, so the officers had Mumford and Wells exit the car and stand in front of Officer Camp's patrol car for safety reasons. Suppr. Tr. 9:1–6, 51:11–21, 60:1–19,

64:13–24, 91:16–22, 93:21–94:8, 95:2–10, 101:23–102:14; Trial Tr. 6:6–6:17; Suppr. Ex. C at MM 8:24–9:47 (1:25:54–1:27:10 a.m.).

While Officer Camp kept preparing the registration violation warning, Dekker and Orozco completed a sniff around Wells's car. Suppr. Tr. 9:7–14, 22:5–23:4, 36:9–20, 46:17–19, 55:4–10; Trial Tr. 21:24–22:2. During the 15-second sniff, Orozco touched the vehicle's exterior and likely stuck his nose in the open passenger's-window that Well's had left rolled down. Suppr. Tr. 60:23–61:5, 76:12–77:15, 81:22–82:3; Trial Tr. 24:16–18. Dekker, however, never touched the car during the sniff. *See* Suppr. Ex. A (Dash Cam) at MM 11:15–11:30 (1:28:03–1:28:18 a.m.). Nor did Dekker encourage Orozco to touch the car or put his nose to the open window during the sniff. Suppr. Tr. 61:6–24, 81:2–85:10; Suppr. Ex. A at MM 11:15–11:30 (1:28:03–1:28:18 a.m.). At no point did Dekker enter, or Orozco jump inside, the car, and there is no evidence of any damage to the car from the sniff. Suppr. Ex. A at MM 11:15–11:30 (1:28:03–1:28:18 a.m.).

Orozco then gave his final indication at the passenger-side door of Wells's car, which confirmed the presence of illegal drugs inside the vehicle. Suppr. Tr. 9:18–21, 39:16–22, 60:20–22, 66:16–20, 82:13–85:10, 86:21–23, 92:12–93:9.

Dekker notified Dispatch, Officer Camp, Mumford, and Wells just as Officer Camp finished printing the warning for the obstructed license plate. Suppr. Tr. 9:18–11:2, 23:1–17, 39:16–22, 51:11–19. By the time Officer Camp "took the warning off the printer" and exited his car, Orozco had finished his sniff and had been placed back in Dekker's patrol car. *See* Suppr. Tr. 9:12–21, 18:16–25, 36:9–20, 49:22–50:8, 55:4–10, 62:19–21, 91:1–5; Trial Tr. 6:12–14; Suppr. Ex. D (Dekker BC) at MM 7:15–9:26 (1:27:27–1:29:36 a.m.).

Dekker then searched the vehicle and Officer Camp searched Mumford's purse that was just inside the car because of Orozco's positive alert to the odor of narcotics. Suppr. Tr. 46:4–9, 47:5–8. They discovered "two bags of methamphetamine in the [car's] glove box," and "a meth pipe and marijuana" in Mumford's purse. Suppr. Tr. 10:8–14, 44:15–23; Trial Tr. 7:15–23, 14:1–4; *see* D0071, Ex. 2 (3/27/23); Conf. App. 49; D0072, Ex. 3 (3/27/23); Conf. App. 50; D0073, Ex. 4; Conf. App. 51; Suppr. Ex. C at MM 16:30–23:16 (1:33:51–1:40:37 a.m.).

ARGUMENT

I. Officer Camp's Decision to Stop Mumford's Vehicle was Reasonable After Because Her License Plate Information was Obstructed or Illegible.

Error Preservation

The State does not dispute error preservation. Mumford's claim that Officer Camp lacked probable cause before stopping her was raised before, and rejected by, the district court. D0046, Ruling Denying MTS (10/8/22) at 1–2; Conf. App. 19–20; *see* D0049, Order Enlarging Findings & Denying MTS (10/20/22); Conf. App. 23–24. That ruling preserved error. *See Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012).

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." *State v. Hague*, 973 N.W.2d 453, 458 (Iowa 2022) (quoting *State v. Brown*, 930 N.W.2d 840, 844 (Iowa 2019)). On review, the Court may affirm on any ground presented to the trial court, including any "appearing in the record but not included in that court's ruling." *DeVoss v. State*, 648 N.W.2d 56, 62 (Iowa 2002) (citation and quotations omitted).

The Court independently evaluates "the totality of the circumstances found in the record, including the evidence introduced at both the suppression hearing and at trial." *State v. Vance*, 790 N.W.2d 775, 780 (Iowa 2010) (citation omitted). And it gives "deference to the district court's fact findings due to its opportunity to assess the credibility of the witnesses, but [it is] not bound by those findings." *In re Pardee*, 872 N.W.2d 384, 390 (Iowa 2015).

Merits

The trial court correctly determined probable cause supported the decision to stop Mumford's vehicle. D0046 at 1–2; Conf. App. 19–20.

The Fourth Amendment and article I, section 8 protect people from "unreasonable searches and seizures." U.S. Const. amend. IV; Iowa Const. art. I, § 8. "A traffic stop is a 'seizure' under both Constitutions." *State v. Griffin*, 997 N.W.2d 416, 418–19 (Iowa 2023) (citations omitted).

For a stop to be constitutional, it must be reasonable. *State v. Salcedo*, 935 N.W.2d 572, 577 (Iowa 2019) (citing *State v. Kreps*, 650 N.W.2d 636, 641 (Iowa 2002)). An officer must have either probable cause or reasonable suspicion before stopping a car. *State v. Warren*,

955 N.W.2d 848, 860 (Iowa 2021); *State v. McIver*, 858 N.W.2d 699, 702 (Iowa 2015). Without either, the stop is unconstitutional. *Griffin*, 997 N.W.2d at 419 (citations omitted).

"When a peace officer observes a violation of our traffic laws, however minor, the officer has probable cause to stop a motorist." *State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004). If a defendant challenges the stop, the State must prove "by a preponderance of the evidence that the officer had probable cause to stop the car," when evaluated from the viewpoint of an objectively reasonable officer. *Brown*, 930 N.W.2d at 955 (quoting *State v. Tyler*, 830 N.W.2d 288, 293–94 (Iowa 2013)). "The motivation of the officer stopping the vehicle is not controlling in determining" if probable cause exists. *See Brown*, 930 N.W.2d at 847 (citation omitted).

Here, probable cause existed to stop Mumford's car. In Iowa, "[e]very registration plate shall at all times be securely fastened … 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." Iowa Code § 321.38. That is, "[a] dirty license plate constitutes a traffic violation." *State v. McFadden*, No. 16-1184, 2017 WL 4315047, at *2 (Iowa Ct. App. Sept. 27, 2017) (citing Iowa Code § 321.38). Officer

Camp saw that the license plate on Mumford's car was covered in "dirt and grime," which made its last two digits unreadable. Suppr. Tr. 11:22–12:11, 13:19–14:15, 31:16–20. And the dirt and grime prevented Officer Camp "from readily reading the plate's numerals and letters while traveling closely behind." *Griffin*, 997 N.W.2d at 419; *see* Suppr. Tr. 13:19–14:7. This established probable cause to stop the car, as the violation "was complete well before [Mumford]'s vehicle stopped." *Griffin*, 997 N.W.2d at 421; *Brown*, 930 N.W.2d at 845; *see State v. Klinghammer*, No. 09-0577, 2010 WL 200058, at *5 (Iowa Ct. App. Jan. 22, 2010) (finding probable cause existed where "the officer was stopped directly behind the vehicle and observed that the plate was obstructed such that he could not read all of it."); *State v. Peden*, No. 08-1039, 2009 WL 606236, at *1 (Iowa Ct. App. Mar. 11, 2009); *State v. Miller*, No. 02-0965, 2003 WL 22015974, at *1 (Iowa Ct. App. Aug. 27, 2003).

Even so, Mumford claims that because Officer Camp could see "the registration plate information after the vehicle comes to a stop, there was no longer any authority to continue" the stop. Def.'s Br. at 12–13. But that's not right. Again, like in *State v. Griffin*, the plate violation here was already "complete."

> [Officer Camp was] traveling closely behind [Mumford] at highway speed. And so the violation was complete well before [Mumford's] vehicle stopped. Once [she] stopped, [the officer] would have been justified in ticketing [her] for the violation or, as [he] planned to do, simply issuing [her] a warning for the violation. Regardless, [Officer Camp was] fully justified in approaching the driver's-side door and talking with [Mumford].

997 N.W.2d at 421. So Mumford's attack on this point should fail.

Mumford also argues that the record somehow "demonstrate[s] a pretextual stop" that is improper. *See* Def.'s Br. at 13. But an officer is "not bound by his real reasons for the stop." *Brown*, 930 N.W.2d at 847 (quoting *Kreps*, 650 N.W.2d at 641). The "subjective motivations of an individual officer in making a traffic stop . . . are irrelevant as long as the officer has objectively reasonable cause to believe the motorist violated a traffic law." *State v. Haas*, 930 N.W.2d 699 (Iowa 2019). So Mumford's claim related to the officer's reasons for stopping her after observing violation of section 321.38 lacks legal footing and should be rejected.

In short, Mumford's license plate violated section 321.38. It was therefore reasonable—and thus constitutional—for Officer Camp to stop her vehicle.

II. The District Court Properly Declined to Suppress the Drugs Detected by the K9 Unit's Sniff that Occurred During the Scope of the Lawful Traffic Stop.

Error Preservation

The State does not dispute error preservation. Mumford's challenge to the constitutionality of the K9's sniff of her car was considered and rejected by the district court. D0049; Conf. App. 23–24; D0046 at 1–2; Conf. App. 19–20; *see Lamasters*, 821 N.W.2d at 864.

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." *Brown*, 930 N.W.2d at 844. It evaluates "the totality of the circumstances found in the record[.]" *Vance*, 790 N.W.2d at 780 (citation omitted). When doing so, the Court gives "considerable deference to the trial court's findings regarding the credibility of the witnesses," and its findings of fact, although it is not bound by those findings. *Tague*, 676 N.W.2d at 201.

On review, the Court may affirm on any ground presented to the trial court, including any "appearing in the record but not included in

that court's ruling." *Iowa Tel. Ass'n v. City of Hawarden*, 589 N.W.2d 245, 252 (Iowa 1999).

Merits

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; *see Carpenter v. United States*, 138 S. Ct. 2206, 2213 (2018). Article I, section 8 of the Iowa Constitution is "essentially identical" to the Fourth Amendment's text. *State v. Burns*, 988 N.W.2d 352, 360 (Iowa 2023). "[S]ection 8 'as originally understood, was meant to provide the same protections as the Fourth Amendment, as originally understood." *Id.* (quoting *Wright*, 961 N.W.2d at 411–12). So, the Court "generally 'interpret[s] the scope and purpose of the Iowa Constitution's search and seizure provisions to track with federal interpretations of the Fourth Amendment' because of their nearly identical language." *Brown*, 930 N.W.2d at 847 (quoting *State v. Christopher*, 757 N.W.2d 247, 249 (Iowa 2008)).

But the Court is not automatically compelled to adopt the Supreme Court's interpretation of the Fourth Amendment when construing section 8. *Id.* Rather, "if a federal interpretation of the

Fourth Amendment is not consistent with the text and history of section 8, [the Court] may conclude that the federal interpretation should not govern [its] interpretation of section 8." *Burns*, 988 N.W.2d at 360. In all cases, however, the Court's duty is "to 'interpret our constitution consistent with the text given to us by our founders,' and to 'give the words used by the framers their natural and commonly-understood meaning' in light of the 'circumstances' at the time of adoption." *Id.* (citations omitted).

Here, Mumford claims the drug-dog sniff constitutes an unreasonable search because Dekker and Orozco "physical[ly] trespassed" on the car. Def.'s Br. at 13–18. That argument, however, falls flat under established precedent, the Fourth Amendment's history, and the customs and practice that limit the breadth of search and seizure protections from before the Amendment was ratified and onward. This is true for three reasons.

First, neither the overall sniff nor Orozco's incidental contact with the car were "searches" within the "fair and ordinary meaning of the term." *Wright*, 961 N.W.2d at 413. Orozco's paws and nose touching Mumford's car are not the type of unreasonable contact, or "trespass," that the Fourth Amendment prohibits.

Second, recent common law trespass theories do not undo the law of dog sniffs. Like other courts have held, this Court should hold common law trespass theories do not outright apply to traffic stops.

And third, because *Wright* cuts too broadly in its discussion of Iowa's search and seizure law—and, as a result, injects significant confusion into Iowa law—its holding should be limited to cases involving houses. If it cannot be limited in such a way, it should be overruled. The Fourth Amendment's history, the law and customs at the time of ratification, and Iowa's trespass statute all support either limiting, or overruling, *Wright*.

A. Precedent establishes that sniffs of a car's exterior are not Fourth Amendment "searches."

Setting aside consideration of common law trespass for a moment, this is an easy case. Within the context of traffic stops, established law forecloses finding Orozco's sniff was a search.

For nearly 60-years, Fourth Amendment protections have been tied to "reasonable expectation[s] of privacy." *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring); *see Burns*, 988 N.W.2d at 361 (same). A reasonable expectation of privacy exists if a defendant (1) "sought to preserve something as private" and (2) that privacy expectation is "one that society is prepared to recognize as

reasonable." *Burns*, 988 N.W.2d at 361 (citations omitted). "Unless both criteria are met, there is no reasonable expectation of privacy, and the Fourth Amendment does not apply." *Id.* (quoting *Carpenter v. United States*, 138 S. Ct. 2206, 2213 (2018)).

An "external sniff" of a vehicle is generally not considered a search, as they do not "compromise any legitimate interest in privacy." *Illinois v. Caballes*, 543 U.S. 405, 408 (2005) (quoting *United States v. Jacobsen*, 466 U.S. 109, 123 (1984)). Society is generally unwilling to recognize a "legitimate expectation of privacy" in contraband, such as illegal drugs. *Id.* at 408–10. So "Any intrusion on [one's] privacy expectations does not rise to the level of a constitutionally cognizable infringement. A dog sniff conducted during a concededly lawful traffic stop reveals no information other than the location of a substance that no [one] has any right to possess does not violate the Fourth Amendment." *Id.* at 409–10 (quoting *United States v. Place*, 462 U.S. 696, 707 (1983)).

This Court has also held that sniffs of a car's exterior are not searches because they do "not expose noncontraband items that otherwise would remain hidden from public view," they reveal "only the presence or absence of narcotics, a contraband item[,]" and "the

airspace around the car is not an area protected by the Fourth Amendment." *State v. Bergmann*, 633 N.W.2d 328, 334 (Iowa 2001) (quoting *Place*, 462 U.S. at 707). And because sniffs are "not a search under the meaning of the Fourth Amendment," "neither probable cause [n]or reasonable suspicion must be present to justify" them. *Id.*

The general rule that drug-dog sniffs are not searches, however, has limits. For instance, a sniff of a house or its curtilage is a search when the officers only learn what they learn by "physically entering and occupying the area to engage in conduct not explicitly or implicitly permitted by the homeowner." *Florida v. Jardines*, 569 U.S. 1, 5–6, 11–12 (2013). That is, a sniff becomes a search "regardless of any privacy expectations if [officers] physically trespass on a constitutional 'effect' for the purpose of obtaining information, or they commit an unlicensed physical intrusion of one's curtilage." *Wright*, 961 N.W.2d at 441 (Christensen, C.J., dissenting). This limit recognizes that "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *State v. Wilson*, 968 N.W.2d 903, 911–12 (Iowa 2022) (citation omitted).

But while "*Jardines* is premised on a trespass rationale involving the special protection accorded to the home[,] it does not alter the analysis for traffic stops." *United States v. Winters*, 782 F.3d 289, 292 (6th Cir. 2015); *United States v. Seybels*, 526 F. App'x 857, 859 n.1 (10th Cir. 2013) (noting *Jardines* "was based on property rights not implicated in the traffic stop context and, hence, did not undermine *Caballes*."); *United States v. Cordero*, No. 5:13–cr–166, 2014 WL 3513181, at *9 (D. Vt. July 14, 2014) ("*Jardines* did not reverse the Court's decisions holding that canine sniffs during traffic stops do not implicate the Fourth Amendment"); *United States v. Taylor*, 978 F.Supp.2d 865, 881–82 (S.D. Ind. 2013). *Jardines* thus recognizes a distinction between the "part of the home itself for Fourth Amendment purposes" and other property. And given this case involves a traffic stop and not a house, the trespass principles relevant to *Jardines* and *Wright* do not apply, as discussed below.

Sniffs can also become searches if an officer directs or encourages the dog to enter the car to smell around.[1] Such "interior

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[1] *See, e.g.*, *United States v. Guidry*, 817 F.3d 997, 1005–06 (7th Cir. 2016); *United States v. Sharp*, 689 F.3d 616, 618–20 (6th Cir. 2012); *United States v. Pierce*, 622 F.3d 209, 214–15 (3d Cir. 2010); *United States v. Lyons*, 486 F.3d 367, 373–74 (8th Cir. 2007); *United States*

sniffs" implicate the automobile exception,[2] given that some of the Amendment's protections extend to a car's interior. *United States v. Pulido-Ayala*, 892 F.3d 315, 318 (8th Cir. 2018) (citations omitted). But the constitutionality of an "interior sniff" turns on the deliberate acts of the officer, not the "instinctive" acts of a dog:

> If a police dog [acts] without assistance, facilitation, or other intentional action by its handler ([']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 . . . . [A] 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[.]

State v. Miller, 766 S.E.2d 289, 296 (N.C. 2014) (citing *United States v. Sharp*, 689 F.3d 616, 618–20 (6th Cir. 2012), *cert. denied*, 568 U.S.

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v. Stone, 966 F.2d 359, 364 (10th Cir. 1989); *State v. George*, No. 15-1736, 2016 WL 6636750 (Iowa Ct. App. Nov. 9, 2016).

[2] "The automobile exception allows officers to search a vehicle without a warrant if the officers have probable cause to believe the vehicle contains contraband. The 'exception rests on twin rationales: (1) the inherent mobility of the vehicle, and (2) the lower expectation of privacy in vehicles compared to homes and other structures.'" *State v. Stevens*, 970 N.W.2d 598, 602 (Iowa 2022) (quoting *State v. Storm*, 898 N.W.2d 140, 145–46 (Iowa 2017)).

1056 (2012); *United States v. Winningham*, 140 F.3d 1328, 1330–31 (10th Cir. 1998)); *see State v. George*, No. 15-1736, 2016 WL 6636750, at *5–6 (Iowa Ct. App. Nov. 9, 2016) (quoting *Miller* and holding that "absent police misconduct, the instinctive actions of a trained canine do not violate the Fourth Amendment or article I, section 8 of the Iowa Constitution."). As the Wisconsin Court of Appeals also recently recognized, courts grappling with "interior sniff" cases "have consistently required the government to demonstrate that law enforcement did not assist, facilitate, or create an opportunity for the canine to enter the vehicle's interior." *State v. Campbell*, 2024 WL 244336, at *7 (Wis. Ct. App. Jan. 23, 2024).

In short, a drug-dog "instinctively jump[ing] into a vehicle without direction by its handler" does not violate the Fourth Amendment or article I, section 8. *George*, 2016 WL 6636750, at *4–6 (discussing and collecting cases).[3]

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[3] Other courts have also concluded a drug-dog's unprompted, instinctive "interior sniff" of a vehicle is not an unconstitutional search. *See, e.g.*, *State v. Beames*, 511 P.3d 1226, 1233 (Utah Ct. App. 2022); *State v. Ruiz*, 497 P.3d 832, 837, 839 (Utah Ct. App. 2021); *United States v. Moore*, 795 F.3d 1224, 1232 (10th Cir. 2015); *United States v. Mostowicz*, No. 11-11900, 417 Fed. App'x 887, 890–91 (11th Cir. 2012); *United States v. Williams*, F.Supp.2d 829, 844–45 (D. Minn. 2010) (citations omitted); *but see United States v. Buescher*, Case No. 23-CR-4014-LTS, 2023 WL 5950124, at *3–9 (N.D. Iowa Sept. 2023).

Here, Orozco did not jump *into* the car during his 15-second sniff. *See* M. Suppr. Ex. B at MM 11:15–11:30 (1:28:03–1:28:18 a.m.). And while he likely put his nose in the car's open window for just a moment, that incidental act does not transform a sniff to a search. *See id*. It was Wells, the car's owner, who left the window open, not the officers. *See* Suppr. Tr. 61:6–24, 81:2–85:10; Suppr. Ex. A at MM 11:15–11:30 (1:28:03–1:28:18 a.m.); *see also State v. Beames*, 511 P.3d 1226,1233 (Utah Ct. App. 2022) (quoting *United States v. Vazquez*, 555 F.3d 923, 930 (10th Cir. 2009)) ("[T]he fact that the passenger window of the vehicle is open, creating an opportunity for the dog to breach the interior of the vehicle, does not render the search unlawful, provided that the officer does not open the window, order the window to be opened, or order the window to remain open."); *United States v. Moore*, 795 F.3d 1224, 1231–32 (10th Cir. 2015). Orozco's contact with the car was incidental and self-initiated without any direction or encouragement by Dekker. And the officers did not search the vehicle until after Orozco alerted which, in turn, provided probable cause to search inside it. *Bergmann*, 633 N.W.2d at 338. Thus, any of the factors that could convert Orozco's sniff into an improper search are not present here.

Mumford also had no reasonable expectation of privacy in the exterior of the car where Orozco mainly sniffed. At any rate, under longstanding precedent, any contact with Wells's vehicle is not fatal. Such incidental contact is not a tactile inspection of the car:

> [The drug-dog] jumped and placed his front paws on the body of the car in several places during the walk-around sniff that took less than one minute. This minimal and incidental contact with the exterior of the car was not *a tactile inspection of the automobile*. It did not involve entry into the car; it did not open any closed container; and it did not expose to view anything that was hidden. The sniff of [the defendant's] car was [like] other canine alerts evaluated by the Supreme Court, and it did "not rise to the level of a constitutionally cognizable infringement."

United States v. Olivera-Mendez, 484 F.3d 505, 511–12 (8th Cir. 2007) (citations omitted) (emphasis added).

To be sure, Iowa's courts have approved of similar sniffs where the drug-dog touched the car's exterior. *See State v. Carson*, 968 N.W.2d 922, 929–30 (Iowa Ct. App. 2021); *see also Stevens*, 970 N.W.2d at 601 (expressing no disapproval when the drug-dog "jumped up on the driver's door where the window was open and sat after *sniffing inside*"). As in those cases, so too here.

Moreover, Orozco's contact with the car did not amount to a "constitutionally cognizable infringement" because he was not searching with his paws or eyes. *Olivera-Mendez*, 484 F.3d at 512 (quoting *Caballes*, 543 U.S. at 409). Orozco did not confirm the presence of drugs because he *felt* the car or *saw* inside it. Unlike an officer during a pat-down, Orozco learned nothing by touching the car. *See State v. Hunt*, 974 N.W.2d 493, 496–500 (Iowa 2022).

True, the Supreme Court of Idaho has held that a drug-dog commits trespass by touching a car during a sniff. *State v. Dorff*, 526 P.3d 988 (Idaho 2023). And the U.S. District Court for the Northern District of Iowa adopted much of *Dorff*'s analysis when it decided *United States v. Buescher*. 2023 WL 5950124, at *3–9 (N.D. Iowa Sept. 12, 2023). Yet those cases stand alone in concluding as much outside the context of the narrow limitations on sniffs discussed above. Both cases also reflect a too-broad definition of "trespass" while also overlooking the Fourth Amendment's history and context for vehicle and vessel searches. *See Dorff*, 526 P.3d at 995–98. By doing so, they ignore the distinctions between homes and cars and, instead, return "to the murky and uncertain legal waters" that should be avoided now. *Id.* at 999 (Moeller, J., dissenting).

At bottom, the trial court correctly denied Mumford's motion to suppress under both the reasonable expectation of privacy test and common law trespass analysis.

B. The common law trespass theory does not erode the caselaw approving of K9 sniffs like Orozco's.

Mumford focuses on Orozco's contact with Wells's car, claiming their contact was an unlawful trespass. *See* Def.'s Br. at 13–18. But that argument lacks merit: The Supreme Court's interpretation of the trespass theory does not support finding Orozco's contact with the vehicle during his 15-second sniff was an unlawful trespass.

In *Jones*, the U.S. Supreme Court incorporated a "historical" trespass test into Fourth Amendment jurisprudence. 565 U.S. 400; *but see* Orinn Kerr, *The Curious History of Fourth Amendment Searches*, 2012 SUP. CT. REV. 67, 68 (2012). *Jones* involved "a law enforcement task force installed a GPS tracking device on the undercarriage of" the defendant's wife's vehicle "without a warrant and tracked the Jeep's movements over the course of twenty-eight days while investigating the defendant for narcotics trafficking." *Wright*, 961 N.W.2d at 446 (Christensen, C.J., dissenting) (quoting and summarizing *Jones*, 565 U.S. at 402–04). The *Jones* Court determined such police conduct constituted a trespass because "the

Government *physically occupied* private property for the purpose of obtaining information." *Jones*, 565 U.S. at 404 (emphasis added).

Justice Alito—along with three other justices—concurred with the majority's judgment in *Jones*, but criticized its trespass analysis, as it "strains the language of the Fourth Amendment; it has little if any support in current Fourth Amendment case law; and it is highly artificial." *Id.* at 418–31 (Alito, J., concurring). Indeed, circuit courts acknowledge that "*Jones* does not provide clear boundaries for the meaning of common-law trespass[.]" *Taylor v. City of Saginaw*, 922 F.3d 328, 332 (6th Cir. 2021). Justice Alito also noted that, historically, "[a]t common law, a suit for trespass to chattels could be maintained if there was a violation of 'the dignitary interest in the inviolability of chattels,' but today there must be 'some actual damage to the chattel before the action can be maintained.'" *Jones*, 565 U.S. at 419 n.2 (quoting W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser & Keeton on Law of Torts* 87 (5th ed. 1984) ("*Prosser & Keeton*").

Then, in *Jardines*, the Supreme Court again considered *Jones*'s trespass approach, this time within the context of a canine sniff around a defendant's house and curtilage. 569 U.S. 1 (2013). After noting that "[a]t the Amendment's 'very core' stands 'the right of a

man to retreat into his own home and there be free from unreasonable governmental intrusion[,]" the Court held that the sniff was an unlawful trespass because the government "gathered th[e] information by *physically entering and occupying the area* to engage in conduct not explicitly or implicitly permitted by the homeowner." *Jardines*, 569 U.S. at 6 (emphasis added). As in *Jones*, *Jardines* emphasizes that physical entry and occupation of a protected area are vital requirements for a trespass to occur: If no entry or occupation of a protected area happened, a "trespass" did not either. *Id.*

In Iowa, the supreme court has suggested that section 8 integrates the *Jones* and *Jardines* trespass test. *Wright*, 961 N.W.2d at 413–14. In *Wright*, the Court examined whether the officer's conduct amounted to a search or seizure under the terms' "fair and ordinary meaning." *Id.* at 413 ("There is no evidence [seizure and search] were terms of art at the time of founding. 'No literal or mechanical approach should be adopting in determining what may constitute a search and seizure.'") (citations omitted). Acknowledging this, the majority concluded that 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

> to obtain information. Government obtains information by physically intruding on persons, houses, papers, or effects, a "search" within the original meaning of the Fourth Amendment has undoubtedly occurred.

Wright, 961 N.W.2d at 413–14 (cleaned up); *see* Intrusion, *Black's Law Dictionary* (11th ed. 2019) ("A person's entering without permission"). But both intrusion *and* damage are required for a trespass to result.

Proving a common law trespass to chattels "requires 'some actual damage to the chattel before the action can be maintained.'" *Wright*, 961 N.W.2d at 405 (Christensen, C.J., dissenting) (quoting *Jones*, 565 U.S. at 419 n.2 (Alito, J., concurring)). And Iowa law generally only criminalizes a "trespass" if some form of damage accompanies it. *Id.* (citing Iowa Code § 716.7(2)).

Mumford relies on *Wright*—and, by extension, *Jones* and *Jardines* –for the proposition that Orozco's physical contact with the vehicle was an unconstitutional trespass. Def.'s Br. at 38–42. But neither Officer Dekker nor Ace ever really "physically entered into" the car during the 15-second sniff. *See* Suppr. Tr. 60:23–61:24, 76:12–77:15, 81:22–85:10; Trial Tr. 24:16–18; Suppr. Ex. A at MM 11:15–11:30 (1:28:03–1:28:18 a.m.). And touching the vehicle did not

provide any information: Orozco *smelled* methamphetamine, he did not touch it. *See id.* There is also no evidence of any "actual damage" to the car caused by Orozco's contact. *See Wright*, 961 N.W.2d at 405 (Christensen, C.J., dissenting) (discussing *Prosser & Keeton* at 87; Restatement (2d) Torts § 218, at 420 (Am. L. Inst. 1981); Iowa Code § 716.7(2)). Thus, under *Jones* and *Jardines*, Orozco did not trespass on the car. *Jardines*, 569 U.S. at 6; *Jones*, 565 U.S. at 404, 419 n.2.

C. ***Wright* and the trespass test from *Jones* and *Jardines* seldom apply to traffic stop and canine sniff cases; to the extent *Wright* applies beyond one's house, it should not.**

Mumford's reliance on *Wright* and the trespass test is misplaced. Even so, her claim exemplifies the problems with applying *Jones*, *Jardines*, and *Wright* to traffic stops. And while federal circuit courts have distinguished *Jones* and *Jardines*, given neither arose from a traffic stop, *Wright* lacks similar limits. Because of this, like the federal precedent its test flows from, *Wright* should be generally limited to cases involving the house.

Wright provides that, under section 8, "an officer acts unreasonably when, without a warrant, [they] physically trespasses on protected property or uses means or methods of general criminal investigation that are unlawful, tortious, or otherwise prohibited." *Id.*

at 416 (citation omitted).[4] *Wright*'s broad definition of "trespass," however, does not acknowledge the relevant history, customs, and practices that give meaning to the Fourth Amendment's scope for matters outside the home. As proof, the State's begins by tracing the Amendment's history, particularly as it relates to vehicle searches.

When the Amendment was ratified, it was widely accepted that houses were special, but other places and things were not. Vehicles and ships were entitled to fewer, if any, of the Amendment's protections. Concluding the same here is "consistent with the text given to us by our founders," and "give[s] the words used by the framers their natural and commonly-understood meaning in light of the circumstances at the time of adoption." *Burns*, 988 N.W.2d at 360 (citations and quotations omitted).

Again, "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *Wilson*, 968 N.W.2d at 911–12. "[W]hen it comes to the Fourth Amendment, the home is first among equals. At [its] 'very core' stands 'the right of a

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[4] Given the ubiquitous approval of using drug-dog sniffs as a method of investigating crime, it is unclear how they would be "unlawful, tortious, or otherwise prohibited." But *Wright*'s breadth and its "trespass" definition could implicate even the most common investigative methods that officers use to protect the public.

man to retreat into his home and there be free from unreasonable government intrusion." *Jardines*, 569 U.S. at 6 (citation omitted).

This was not always the case, though. Since at least *Semaines Case* in 1604, "[a]n assumption of the common law of trespass . . . was that an Englishman's house was the king's castle in all instances of public concern." William J. Cuddihy, *The Fourth Amendment: Origins and Original Meaning, 602–1791*, 593 (Oxford Univ. Press 2009) ("*Cuddihy*").[5] And long before the Revolution and *The Wilkes Cases*, Englishmen challenged unlawful or unreasonable searches and seizures by bringing civil trespass and false imprisonment cases. *Id.* But one's ability to bring such cases was not without "severe limitations:" While "trespass was quite effective when a forcible search and seizure had occurred without affecting the public interest," "nearly all kinds of general warrants and searches *did* affect that interest .... The promiscuity of a search, arrest, or seizure [by officials]

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[5] Cuddihy's research on the Amendment's roots has been called a "necessary" read "for any scholar who seeks to do serious work on search-and-seizure law," "simply unparalleled," and "a life-long research tool." Thomas K. Clancy, *The Role of History*, 7 Ohio St. J. Crim. L. 811, 823 (Spring 2010). As Justice O'Connor put it, Cuddihy's work is "one of the most exhaustive analyses of the original meaning of the Fourth Amendment ever undertaken[.]" *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 669 (1995) (O'Connor, J., dissenting).

constituted neither false imprisonment nor trespass, nor was it even an aggravation of either." *Id.* at 593 (emphasis in original).

The *Wilkes Case*'s changed that. And, in *Entick v. Carrington* (1765), Lord Camden proclaimed "any invasion or seizure of private property was a trespass unless some positive law stipulated otherwise." *Id.* at 593–94.

Jumping forward, at the time of the Revolution, the new states regularly used search methods like the general warrant, including "general powers of arrest, and searches of *all ships or wagons* entering or departing a particular jurisdiction." *Id.* at 620 & n.65 (compiling statutes) (emphasis added). Even after the Revolutionary War, "[p]romiscuous searches and seizures were not emergency measures that the new states used only as the exigencies of war required. To the contrary, the revolutionary state governments employed those methods for such commonplace activities as collecting taxes, protecting wildlife, pursuing fugitives, and subjugating slaves." *Id.* at 623. Between 1776 and 1789, many states kept using general warrants. *Id.* at 624. And, even in New England, state laws allowed officials to "'search any suspected places or Houses' without any sort of warrant." *Id.* at 629 & n.99 (citations omitted).

And still, the Fourth Amendment continued to take shape, reflecting "centuries of definition [that] were neither unidentifiable nor ambiguous. A broad consensus existed on the meaning of 'unreasonable searches and seizures' when the Bill of Rights emerged." *Id.* at 734. In fact, while the Amendment was being ratified, the First Congress enacted search and seizure laws that give insight on the Amendment's meaning and limits.

Take the Collection Act of 1789, which is hailed as the "most significant" indicator of the Amendment's meaning, as understood by the Framers. *Id.* at 736–38. It "identified the techniques of search and seizure that the framers . . . believed reasonable while they were framing it," given Congress considered "the search warrant section of that act" "only twelve days before the amendment originated, and that section became law just three weeks before the amendment assumed definitive form." *Id.* Substantively, the Act "introduced search and seizure to federal law in an effort to enforce the nation's first tax," and permitted officials to "enter any ship or vessel" to conduct "a warrantless search on reasonable suspicion that it concealed taxable

property." *Id.* at 735.[6] It also allowed "officers to conduct warrantless searches not only of ships but, upon disembarkation, of their cargoes as well. A customs officer who suspected an importer of giving a false account of goods awaiting entry could open and search the containers bearing those goods." *Id.* at 746.

Or Consider the Excise Act of 1791, which was also passed by the First Congress. This law allowed the warrantless search of all registered "houses, store-houses, ware-houses, buildings and places" during the day. *Id.* at 736.[7] Like the Collection Act, the Excise Act still permitted warrantless searches and seizures, but it included protections for houses. *Id.*

Indeed, "In the minds of the Congressmen who wrote the Fourth Amendment, the belief that a man's house was his castle cut in both directions. Structures afforded the privacy of houses to the extent they resembled them. Dwelling houses were castles, but ships were not, and places of business affecting the public interest were

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[6] U.S. St., 1st Cong., 1st sess., c. 5, § 24 (31 July 1789), U.S. Stats., vol. 1 (1789–99), pp. 29 at 43; REPRINTED; *D.H.F.F.C.*, vol. 4 (Legis. Histories), pp. 309 at 327)).

[7] *See* U.S. St., 1st Cong., 3rd Sess. c. 15, §§ 29, 32 (3 Mar. 1791), U.S. Stats., vol. 1 (1789–99), pp. 199 at 207; REPRINTED; D.H.F.F.C., vol. 4 (Legis. Histories), pp. 551 at 561, 562.

somewhere in between." *Id.* at 746. Legal guides from 1788 and 1791 also reflect this distinction and map the deep roots of the "hot pursuit" and "exigent circumstances" exceptions to the Amendment's warrant preference clause. *Id.* at 750–51 (collecting sources).

As for common law trespass, history shows there were limits on the early-Americans' ability to recover against officials. For example, "A sheriff who penetrated a house to arrest on a civil process" could only be "guilty of trespass if the person to be arrested was not there and did not own that house." *Id.* at 751. And after a defendant was in custody, police could search and seize "the prisoner, his clothing, baggage, saddlebags, and sometimes even his lodgings would be searched . . . . [T]he legitimacy of body searches as an adjunct to the arrest process had been thoroughly established in colonial times, so much so that their constitutionality in 1789 cannot be doubted." *Id.* at 751–52. Thus, the Founders never had a bright line rule—or really a rule at all—against warrantless searches and seizures.

History also reveals that vehicles, vessels, and ships were regularly subject to warrantless searches and seizures. *Id.* at 770. "The current notion that the Framers intended the Fourth Amendment to address ships likely derives from Chief Justice Taft's

claim in *Carroll* that the Framers would have viewed warrantless searches of 'vehicles' as 'reasonable' searches under the Fourth Amendment because the First Congress had authorized customs officers to make warrantless searches of ships in the 1789 Collections Act." Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 606 (1999) (citing *Carroll v. United States*, 267 U.S. 132, 150–51 (1925)) ("*Davies*"). And, again in 1815, the Collection Acts expressly allowed officials to

> stop, search and examine any carriage or vehicle, of any kind whatsoever, and to stop any person travelling on foot, or beast of burden, on which he shall suspect there are [uncustomed] goods, wares, or merchandise . . . . The necessity for a search warrant arising under this act, shall in no case be considered as applicable to any carriage, wagon, cart sleigh, vessel, boat, or other vehicle, of whatever form or construction, employed as a medium of transportation, or to any packages on any animal or animals, or carried by man on foot."

Act of Mar. 3, 1815, ch. 94, § 2, 3 Stat. 231, 232. Although this law was repealed a year later, it was reenacted in 1865 and remained on the books afterward in a similar form. Act of Feb. 28, 1865, ch. 67, § 1, 13 Stat. 441, 441–42, *reenacted in* Act of July 18, 1866, ch. 201, § 2, 14 Stat. 178, *incorp. into* Rev. Stats., ch. 10, § 3061, 18 Stat. 588.

Apart from these laws, nothing suggests "the constitutionality of this search authority regarding vehicles was [e]ver challenged in court." *Davies* at 714 n.472. Simply put, history, custom, and judicial interpretations from the Founding do not support the notion that vehicles were entitled to any significant constitutional protections.

Like the statutes addressing vehicles after the Founding, the Supreme Court officially recognized the automobile exception to the Fourth Amendment warrant preference requirement almost a century ago. *See Carroll*, 267 U.S. 132. Although *Carroll* marked the first time the automobile exception was recognized by name, the Supreme Court acknowledged the longstanding distinction between places to be searched for purposes of the Fourth Amendment. *See Carroll*, 267 U.S. at 153.

Since *Carroll*, the Supreme Court has generally declined to alter the recognized automobile exception and has refused to "distinguish between 'worthy' and 'unworthy' vehicles which are on the public roads and highways, or situated such that it is reasonable to conclude that the vehicle is not being used as a residence." *California v. Carney*, 471 U.S. 386, 394 (1985); *see South Dakota v. Opperman*, 428 U.S. 364, 368 (1976). The Court has also emphasized that "the

rationales applied only to automobiles and not to houses, and therefore supported 'treating automobiles different from houses' as a constitutional matter." *Collins v. Virginia*, 138 S. Ct. 1663, 1670 (2018) (citations and quotations omitted).

In sum, both history and caselaw demonstrate at least four key points. First, while the Amendment is silent on what level of protection vehicles are entitled, history, societal customs, and early statutes reveal that the Framers granted far fewer protections to vehicles than to houses. Second, after the Amendment's ratification, the early-Congresses kept enacting laws that limited search and seizure protections to vehicles and vessels. Sometimes, those laws gave no protections at all to vehicles. Third, the Framers recognized Congress's authority to (1) enact laws that grant broad search and seizure powers to officials, and (2) limit governmental liability exposure for those rare cases when searches and seizures were found to be unlawful via tort claims. In any event, the "exclusionary rule" lacks historical support for the practice of excluding relevant evidence of criminal activity. *Burns*, 988 N.W.2d at 373–82 (McDonald, J., concurring). The Framers believed that rule was an insufficient, undesirable protection. *Id.* at 377. And fourth, courts have routinely

recognized the automobile exception's validity for nearly a century. In doing so, courts have recognized that history, custom, and the law from the Founding to today has granted certain places or property (cars and businesses) less protection. And that regulatory interest, in turn, reflects society's agreement to afford those places and things fewer protections under the Fourth Amendment and state analogues.

But applying these notions to traffic stops and the like in the wake of *Wright* is hard. *Wright* unduly limits an officer's authority without specifying when a warrant is, and is not, required. After all, a warrant has never been required in all instances. *See Davies* at 571 ("It is clear that the Framers did not intent that warrants be required for all searches and seizures conducted by officers."). Likewise, the historical, practical understanding of *who* could commit a trespass—and *how* they could commit it—was "severely limited" to often exclude government officials. Often, laws served as the accepted authority for warrantless searches and seizures, reflecting society's acceptance of warrantless searches of places or things outside the home as the norm, not the exception.

Further, today's positive law supports affirming the trial court here and limiting *Wright*'s application. "In determining whether an

officer's conduct is unlawful, tortious, or otherwise prohibited," courts try "to discern and describe existing societal norms" by examining "democratically legitimate sources of [positive] law," including "statutes, rules, orders, ordinances, judicial decisions, etc." *Wright*, 961 N.W.2d at 416 (quoting *Carpenter*, 138 S. Ct. at 2265, 2268). In doing so, the Court aims to identify "the proper scope of law enforcement authority." *Id.* "Statutes do not serve as constitutional definitions but provide us with the most reliable indicator of community standards to gauge the evolving views of society important to our analysis." *Griffin v. Pate*, 884 N.W.2d 182, 198 (Iowa 2016) (citations omitted). After all, property rights "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972); *accord Moore v. Harper*, 143 S. Ct. 2065, 2088 (2023).

In *Wright*, the majority suggested article I, section 8 serves "to prohibit an officer engaged in general criminal investigation from committing a trespass against a citizen's person, house, papers, and effects without first obtaining a warrant." *Wright*, 961 N.W.2d at 412 n.5 (citations omitted). But it also recognized that even if trespass

laws of 1791 swept broadly then, such actions can still be limited under modern Iowa law now: "The scope of what constitutes a trespass has changed, not the meaning of article I, section 8." *Id.* (citation omitted). Contemporary trespass laws are thus the best source for discerning what society considers a trespass and, in turn, what violates both Constitutions. *Id.*

Modern trespass principles and law do not support defining "trespass" as broadly as the *Wright* majority does. *Wright*, 961 N.W.2d at 405 (Christensen, C.J., dissenting) (quoting *Jones*, 565 U.S. at 419 n.2 (Alito, J., concurring); citing Iowa Code § 716.7(2)). Again, a trespass to chattels requires proof of "actual damages." *Id.* (citations omitted). *Wright* does not recognize that, perhaps unlike real property trespasses, damages are required to prove a trespass to chattels. *Id.* Because of this, *Wright* also does not recognize that modern positive law altered the scope of the Amendment's protections and, in doing so, also refined the definition of "trespass" to include the damages requirement. *Wright*'s definition of "trespass" therefore is too broad to be easily applied now.

Mumford also argues that because Orozco touched the vehicle and smelled the open window, he physically trespassed on the car.

Def.'s Br. at 17. But, again that's not right. Orozco's minimal, quick contact with the car is far closer to "door-knocking or soliciting," which is "not the same" as a "trespass [that] consists of entering private property without express permission in order to place something thereon." *State v. Geddes*, 998 N.W.2d 166, 180 (Iowa 2023) (citing Iowa Code § 716.7(2)(a)(1)); *see State v. Chase*, 335 N.W.2d 630, 633–35 (Iowa 1983). There is no evidence that Officer Dekker or Orozco intended to leave anything behind or significantly interfere with the possession of the vehicle. In fact, the record shows quite the opposite: The sniff lasted mere seconds. *See* M. Suppr. Ex. B at MM 11:15–11:30 (1:28:03–1:28:18 a.m.). Given that Orozco, unlike *Geddes*, did not intend to leave anything behind either inside the vehicle or on its exterior, the Court should reject this claim.

* * *

Neither the Fourth Amendment's history nor Iowa's modern positive law support finding Orozco trespassed on the car. This Court should therefore affirm.

III. Sufficient Evidence Exists in the Record to Prove Mumford Possessed Marijuana.

Error Preservation

The State does not contest error preservation. "A defendant's trial and the imposition of sentence following a guilty verdict are sufficient to preserve error with respect to any challenge to the sufficiency of the evidence raised on direct appeal." *State v. Crawford*, 972 N.W.2d 189, 201 (Iowa 2022).

Standard of Review

The Court reviews sufficiency of the evidence claims for correction of errors at law. *Id.* at 202 (quoting *State v. Buman*, 955 N.W.2d 215, 219 (Iowa 2021)). When doing so, the Court is "highly deferential to the jury's verdict. The jury's verdict binds th[e] court if the verdict is supported by substantial evidence." *State v. Mong*, 988 N.W.2d 305, 312 (Iowa 2023) (citation and quotations omitted). "Substantial evidence is evidence sufficient to convince a rational trier of fact the defendant is guilty beyond a reasonable doubt." *Jones*, 967 N.W.2d at 339. "Evidence is not insubstantial merely because [appellate courts] may draw different conclusions from it." *Id.*

The Court "review[s] a trial court's findings in a jury-waived case as [it] would a jury verdict: If the verdict is supported by substantial

evidence, [the Court] will affirm." *State v. Weaver*, 608 N.W.2d 797, 804 (Iowa 2000) (citing *State v. Torres*, 495 N.W.2d 678, 681 (Iowa 1993)). When doing so, the Court considers "all evidence, not just the evidence supporting the conviction" when reviewing sufficiency claims. *State v. Ernst*, 954 N.W.2d 50, 54 (Iowa 2021) (quoting *State v. Tipton*, 897 N.W.2d 653, 692 (Iowa 2017)). And it "view[s] the evidence in the light most favorable to the State, including all legitimate inferences and presumptions that may fairly and reasonably be deduced from the record evidence." *State v. Booker*, 989 N.W.2d 621, 626 (Iowa 2023) (citations and quotations omitted).

Merits

Mumford argues that the evidence could not prove the substance found in her purse was marijuana. *See* Def.'s Br. at 18–23. The State disagrees.

"Unlawful possession of a controlled substance requires proof that the defendant: (1) exercised dominion and control over the contraband, (2) had knowledge of its presence, and (3) had knowledge that the material was a controlled substance." *State v. Bash*, 670 N.W.2d 135, 137 (Iowa 2003). Mumford does not challenge her possession of the illegal substance on appeal; instead,

she only asserts there is insufficient evidence to prove that substance was marijuana. *See* Def.'s Br. at 18–23. Accordingly, the State focuses on only the second element.

In Iowa, our appellate courts "have always recognized that, for a person to be convicted of a drug offense, the State is not required to test the purported drug." *State v. Brubaker*, 805 N.W.2d 164, 172 (Iowa 2011) (citing *In the Interest of C.T.*, 521 N.W.2d 754, 757 (Iowa 1994)). "The finder of fact is free to use circumstantial evidence to find that the substance is an illegal drug." *Id.*

Along with other nonexclusive factors, "circumstantial proof may include evidence of the physical appearance of the substance involved in the transaction," for example, and whether "the substance was called by the name of the illegal narcotic by the defendant or others in [their] presence." *State v. Neades*, No. 20-1624, 2021 WL 5106498, at *4 (Iowa Ct. App. Nov. 3, 2021) (quoting *Brubaker*, 805 N.W.2d at 173) (citations omitted)). In any case, though, the Court looks "at the[] circumstances in light of the evidence produced at trial to determine whether the state produced sufficient evidence to support the proposition that the substance was an illegal substance

when expert testimony did not identify the substance as illegal." *Brubaker*, 805 N.W.2d at 173.

Here, the trial court correctly found that "two experienced police officers, including one whose primary job duties include handling the drug K9 and being a Drug Recognition Expert, both testified that the substance was marijuana based on their training and experience." D0083 at *5. As Mumford admits in her brief, "a witness testified her that the green leafy substance appears to be marijuana." Def.'s Br. at 21. After finding it in her purse, Officer Camp immediately recognized that the substance was marijuana. State's Trial Ex. 1 (Camp Body Cam) at MM 18:31–18:52 (1:35:53–1:36:13 a.m.) (reflecting Camp's statement that Mumford's "got weed. She's got weed in her purse .... She's got weed and a meth pipe."); Suppr. Ex. C at 18:31–18:52 (1:35:53–1:36:13 a.m.); *see* Trial Tr. 7:15–23, 14:1–4. The marijuana was in a clear plastic baggie inside Mumford's purse alongside a methamphetamine pipe. *Id.* At trial, Officer Camp confirmed that State's Exhibit 2 shows "the clear plastic bag or casing," which is "what the marijuana [was] in. And then right below that, the clear glass tube, that's []a methamphetamine pipe."

Trial Tr. 9:4–24; D0071, Ex. 2; Conf. App. 49; *see* D0073, Ex. 4; Conf. App. 51.

Mumford also stipulated to both Officer Camp's and Officer Dekker's credentials at trial. *See* Trial Tr. 4:10–15, 21:13–23. In Iowa, certified law enforcement officers are required to attend training within a year of their hiring to remain eligible for employment as a peace officer. Iowa Code § 80B.11; 501 Iowa Admin. Code 3.1(1) (2022). The Iowa Law Enforcement Academy mandates extensive training for officers, ranging between 400 and 620 hours of instruction. 501 Iowa Admin. Code rr. 3.5, 3.6. By law, ILEA graduates are required to complete extensive training in narcotics and controlled substance investigations, intoxication investigations, drug recognition training for street officers, and more. *Id.* Because of this, it was reasonable for the factfinding trial court to conclude the officers competently recognized the substance in Mumford's purse was marijuana. And the evidence—taken in the light most favorable to the State—establishes that the substance was, in fact, marijuana.

Separately, Mumford claims that because the State did not prove the marijuana was not hemp, her conviction cannot stand. Def.'s Br. at 22–23. But this is a sufficiency challenge with a light-

most-favorable-to-the-State standard of review. *See State v. Slayton*, 417 N.W.2d 432, 435 (Iowa 1987). So "the State is not required to negate any and all rational hypotheses of the defendant's innocence." *Jones*, 967 N.W.2d at 342. In any event, other courts who have addressed similar arguments at the federal level have found such "hemp claims" meritless. *See United States v. Rivera*, 74 F.4th 134, 135–140 (3d Cir. 2023) (citations omitted).[8] And Mumford did not comply with laws for the packaging and labeling requirements for consumable hemp products, so she can find no solace under Iowa's own laws, either. *See* Iowa Code § 204.7(8)(a) (stating that "a consumable hemp product shall not be . . . consumed . . . in [Iowa] unless . . . (3) The consumable hemp product complies with packaging and labeling requirements which shall be established by the department of health and human services by rule."); 641 Iowa Admin. Code r. 156.4 ("Each consumable hemp product . . . shall be

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[8] "By excluding hemp from the definition of marijuana, the Farm Bill carved out an *exception* to marijuana offenses: Someone with cannabis possesses marijuana *except* if the cannabis has a THC concentration of 0.3% or less. The government need not disprove an exception to a criminal offense unless a defendant produces evidence to put the exception at issue. Because [the defendant] did not put the hemp exception at issue, the government bore no burden to prove that it was applicable." *United States v. Rivera*, 74 F.4th 134, 136 (3d Cir. 2023).

labeled such that a reasonable consumer would plainly identify the product as consumable hemp and shall contain the following information: (a) Lot number; (b) Expiration date; (c) Product name; (d) Name, telephone number, and email address of the product manufacturer; (e) If specific cannabinoids are contained within or marketed for the product, the number of milligrams of each cannabinoid per serving and serving size; (f) A certificate of analysis that the batch contained a total delta-9 tetrahydrocannabinol concentration that did not exceed 0.3 percent on a dry weight basis as calculated pursuant to an official test as provided in Iowa Code section 204.8."). In this case, Mumford's marijuana was found in a plastic Ziploc bag. *See* D0073, Ex. 4; Conf. App. 51; D0071, Ex. 2; Conf. App. 49. Mumford therefore violated the laws that would otherwise permit her to consume the marijuana even if it were hemp. And as a result, her potential "hemp defense" fails.

As argued above, when viewed in the light most favorable to the verdict, the evidence supports Mumford's conviction for possessing marijuana. Accordingly, this Court should affirm.

IV. The Trial Court Correctly Rejected Mumford's Motion in Arrest of Judgment.

Error Preservation

The State does not dispute error preservation. Mumford moved to arrest judgment for her marijuana possession conviction. D0085, M. in Arrest of J. (5/4/23); Conf. App. 34–40. And the district court rejected her motion. D0091, Ruling on M. to Arrest J. (6/8/23); Conf. App. 41–43.

Standard of Review

This Court reviews "challenges to denials of motions in arrest of judgment for an abuse of discretion." *State v. Petty*, 925 N.W.2d 190, 194 (Iowa 2019) (citing *State v. Smith*, 753 N.W.2d 562, 564 (Iowa 2008)). "An abuse of discretion will only be found where the trial court's discretion was exercised on clearly untenable or unreasonable grounds." *Smith*, 753 N.W.2d at 564 (citing *State v. Craig*, 562 N.W.2d 633, 634 (Iowa 1997)). But "[a] motion in arrest of judgment may not be used to challenge the sufficiency of evidence." *State v. Dallen*, 452 N.W.2d 398, 399 (Iowa 1990).

Merits

Mumford essentially claims the trial court erred in denying her motion in arrest of judgment because insufficient evidence exists to

prove she possessed marijuana. *See* Def.'s Br. at 23–25. Because Mumford seeks to simply repackage sufficiency of the evidence claim through a motion in arrest of judgment, her claim should fail.

A motion in arrest of judgment can only be granted "when upon the whole record no legal judgment can be pronounced." Iowa R. Crim. P. 2.24(3)(a)(c). "Although the motion may be filed after a verdict of guilty, it is usually made to challenge the adequacy of a guilty plea. A motion in arrest of judgment may not be used to challenge the sufficiency of evidence." *Dallen*, 452 N.W.2d at 399 (citing *State v. Oldfather*, 306 N.W.2d 760, 762 (Iowa 1981); *State v. Young*, 153 Iowa 4, 6, 132 N.W. 813, 814 (1911)). "[T]he term 'whole record' . . . does not refer to the evidence of the trial itself." *McGhee v. State*, No. 22-0075, 2023 WL 3862172, at *3 (Iowa Ct. App. June 7, 2023) (quoting *Oldfather*, 306 N.W.2d at 762). "Instead, after a guilty verdict, a defendant may use a motion in arrest of judgment to challenge whether the criminal statute applies to the facts of the case." *Id.* (citation omitted).

Here, Mumford's claim goes to the weight of the evidence—the officer's testimony and identification of the marijuana found in her purse—"which is not a proper basis for a motion in arrest of

judgment." *Id.* (citing Iowa R. Crim. P. 2.24(3)(a); *Dallen*, 452 N.W.2d at 399). Mumford's claim should therefore be rejected.

CONCLUSION

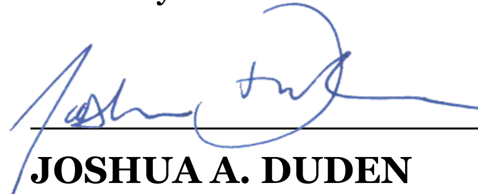
Mumford fails to prove that the trial court improperly denied her motions to suppress and arrest judgment. And because sufficient evidence supports her conviction for possessing marijuana, the Court should affirm.

REQUEST FOR NONORAL SUBMISSION

Oral argument is unnecessary.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa



JOSHUA A. DUDEN
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
Joshua.Duden@ag.iowa.gov

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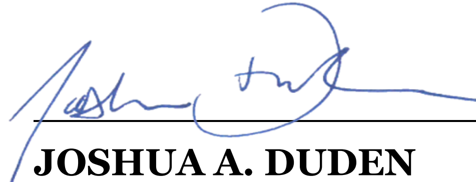

JOSHUA A. DUDEN
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
Joshua.Duden@ag.iowa.gov