

IN THE SUPREME COURT OF IOWA

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STATE OF IOWA,

Plaintiff,

v.

TYRE BROWN,

Defendant-Appellant.

S.CT. NO. 22-0023

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR BLACK HAWK COUNTY  
HONORABLE PATRICK WEGMAN, JUDGE

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APPELLANT'S BRIEF AND ARGUMENT

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## **CERTIFICATE OF SERVICE**

On the 18<sup>th</sup> day of September 2023, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Tyre Brown, 1095 Western Drive, Lot 623L, Colorado Springs, CO 80920.

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## TABLE OF CONTENTS

	<u>Page</u>
Certificate of Service .....	2
Table of Authorities .....	4
Statement of the Issue Presented for Review.....	7
Routing Statement .....	10
Statement of the Case .....	10
Argument	
Officer Meunsavang did not have the requisite reasonable suspicion to extend the traffic stop and search the vehicle in which Brown was a passenger. The suppression of the gun found under the passenger seat was required .....	23
Conclusion.....	36
Request for Non-oral Argument .....	37
Attorney's Cost Certificate .....	37
Certificate of Compliance.....	38

## **TABLE OF AUTHORITIES**

<u>Cases:</u>	<u>Page:</u>
Cedar Rapids Community School Dist. v. Pease, 807 N.W.2d 839 (Iowa 2011) .....	31
Delaware v. Prouse, 440 U.S. 648 (1979).....	29
Florida v. Royer, 460 U.S. 491 (1983).....	27, 29-30
In re Pardee, 872 N.W.2d 384 (Iowa 2015).....	30, 34
Illinois v. Caballes, 543 U.S. 405 (2005) .....	27-29
Katz v. United States, 88 S. Ct 507 (1967).....	26
Rodriguez v. United States, 575 U.S. 348 (2014) .....	27-30
State v. Aderholdt, 545 N.W.2d 559 (Iowa 1996).....	26-29
State v. Akers, No. 17-0577, 2018 WL 1182616 (Iowa Ct. App. March 7, 2018) .....	32
State v. Brown, 930 N.W.2d 840 (Iowa 2019).....	26
State v. Bruegger, 773 N.W.2d 862 (Iowa 2009).....	25
State v. Cline, 617 N.W.2d 277 (Iowa 2000).....	25
State v. Despenas, No. 21-1775, 2023 WL 2396460 (Iowa Ct. App. March 8, 2023) .....	32
State v. Hauge, 973 N.W.2d 453 (Iowa 2022).....	24
State v. Kreps, 650 N.W.2d 636 (Iowa 2002).....	26

State v. Lane, 726 N.W.2d 371 (Iowa 2007) .....	24
State v. McGrane, 733 N.W.2d 671 (Iowa 2007).....	26
State v. McIver, 858 N.W.2d 699 (Iowa 2015) .....	30
State v. Mohr, No. 19-0070, 2020 WL 564907 (Iowa Ct. App. Feb. 5, 2020) .....	31
State v. Ochoa, 792 N.W.2d 260 (Iowa 2010).....	25
State v. Pals, 805 N.W.2d 767 (Iowa 2011) .....	24, 28
State v. Ripperger, No. 14-2108, 2016 WL 146525 (Iowa Ct. App. Jan. 13, 2016) .....	31-32
State v. Salcedo, 935 N.W.2d 572 (Iowa 2019).....	30, 34
State v. Showalter, 427 N.W. 2d 166 (Iowa 1988) .....	26
State v. Turner, 630 N.W.2d 601 (Iowa 2001) .....	25
State v. Wilkerson, No. 11-1522, 2012 WL 2819369 (Iowa Ct. App. July 11, 2012) .....	32
United States v. Guerrero, 374 F. 3d 584 (8 <sup>th</sup> Cir. 2004).....	34
United States v. Murillo-Salgado, 854 F.3d 407 (8 <sup>th</sup> Cir 2017).....	28-29
United States v. Woods, 829 F.3d 675 (8 <sup>th</sup> Cir. 2016) ....	29
U.S. v. Beck, 140 F.3d 1129 (8 <sup>th</sup> Cir. 1998) .....	34

Constitutional Provisions:

U.S. Const. amend. IV ..... 24

Iowa Const. art. I, § 8 ..... 24

## **STATEMENT OF THE ISSUE PRESENTED FOR REVIEW**

**I. Whether Officer Meunsavang had the requisite reasonable suspicion to extend the traffic stop and search the vehicle in which Brown was a passenger? Whether the suppression of the gun found under the passenger seat required?**

### **Authorities**

State v. Hauge, 973 N.W.2d 453, 458 (Iowa 2022)

State v. Pals, 805 N.W.2d 767, 711 (Iowa 2011)

State v. Lane, 726 N.W.2d 371, 377 (Iowa 2007)

U.S. Const. amend. IV

Iowa Const. art. I, § 8

State v. Ochoa, 792 N.W.2d 260, 267 (Iowa 2010)

State v. Cline, 617 N.W.2d 277, 285 (Iowa 2000), overruled on other grounds by State v. Turner, 630 N.W.2d 601, 606 (Iowa 2001)

State v. Bruegger, 773 N.W.2d 862, 883 (Iowa 2009)

Katz v. United States, 88 S. Ct 507, 514 (1967)

State v. Showalter, 427 N.W. 2d 166 (Iowa 1988)

State v. Kreps, 650 N.W.2d 636, 641 (Iowa 2002)

State v. Brown, 930 N.W.2d 840, 845 (Iowa 2019)

State v. Aderholdt, 545 N.W.2d 559, 563 (Iowa 1996)

State v. McGrane, 733 N.W.2d 671, 676 (Iowa 2007)

Florida v. Royer, 460 U.S. 491, 500 (1983)

Rodriguez v. United States, 575 U.S. 348, 354 (2014)

Illinois v. Caballes, 543 U.S. 405, 407 (2005)

United States v. Murillo-Salgado, 854 F.3d 407, 414-415  
(8<sup>th</sup> Cir 2017)

Delaware v. Prouse, 440 U.S. 648, 658-659 (1979)

United States v. Woods, 829 F.3d 675, 679 (8<sup>th</sup> Cir. 2016)

State v. McIver, 858 N.W.2d 699, 702 (Iowa 2015)

State v. Salcedo, 935 N.W.2d 572, 578 (Iowa 2019)

In re Pardee, 872 N.W.2d 384, 391 (Iowa 2015)

Cedar Rapids Community School Dist. v. Pease, 807 N.W.2d  
839, 849 (Iowa 2011)

State v. Mohr, No. 19-0070, 2020 WL 564907, at \*2 (Iowa Ct.  
App. Feb. 5, 2020)

State v. Ripperger, No. 14-2108, 2016 WL 146525, at \*2 (Iowa  
Ct. App. Jan. 13, 2016)

State v. Wilkerson, No. 11-1522, 2012 WL 2819369, at \*2-3  
(Iowa Ct. App. July 11, 2012)



State v. Despenas, No. 21-1775, 2023 WL 2396460, at \*4  
(unpublished table decision)

State v. Akers, No. 17-0577, 2018 WL 1182616, at \*2–3 (Iowa  
Ct. App. March 7, 2018)

United States v. Guerrero, 374 F. 3d 584, 590 (8<sup>th</sup> Cir. 2004)

U.S. v. Beck, 140 F.3d 1129, 1137 (8<sup>th</sup> Cir. 1998)

## **ROUTING STATEMENT**

This case should be transferred to the Court of Appeals because the issues raised involve applying existing legal principles. Iowa R. App. P. 6.903(2)(d) and 6.1101(3)(a).

## **STATEMENT OF THE CASE**

### **Nature of Case**

Defendant-Appellant Tyre Brown appeals his conviction following a trial on the minutes, for Carrying Weapons-a Firearm/Pistol, an aggravated misdemeanor, in violation of Iowa Code section 724.41(1). Brown, the passenger in a vehicle challenges whether an officer extended the seizure of the vehicle and conducted an improper search in violation of his constitutional rights. Brown argues that the suppression of a gun found on the vehicle's passenger side is warranted.

### **Course of Proceeding**

On June 3, 2022, the Stated filed a trial information charging Tyre Brown with Carrying Weapons, in violation of Iowa Code 724.4(1), an aggravated misdemeanor. (06/03/21

Trial Information) (App. pp. 6-7). Brown entered a plea of not guilty. (06/11/21 Written Arraignment and Plea of Not Guilty) (App. pp. 8-10). Brown filed a motion to suppress evidence due to a violation of his constitutional rights under the federal and state constitution, on July 30, 2021. (07/30/21 Motion to Suppress) (App. pp. 10-11). The State filed a resistance to Brown's motion to suppress. (08/20/21 Resistance) (App. pp. 12-16). Following the initial suppression hearing, the district court noted that Brown requested more time to brief his motion to suppress. (09/08/21 Other Order) (App. pp. 17-18). On August 26, 2021, Brown filed a brief on following the suppression hearing. (08/26/21 Brief on Questions Presented by the Court Following the Suppression Hearing) (App. pp. 19-26 ). On September 15, 2021, Brown filed an additional brief on the questions presented by the court following the suppression hearing. (09/15/21 Brief) (App. pp. 27-43). The district court denied the motion to suppress. (09/27/21 Other Order) (App. pp. 44-45). On November 3, 2021, Brown waived

his right to a jury trial and stipulated to the minutes of testimony. (11/03/21 Other Event: Waiver of Jury Trial; 09/28/21 Stipulation Filing) (App. pp. 46-48). Brown was found guilty as charged and was sentenced to a fine of \$855.00 and he deemed was ineligible to get a permit to carry a dangerous weapon. (01/05/22 Order of Disposition) (App. pp. 49-54). Brown filed a timely notice of appeal. (01/05/22 Notice of Appeal) (App. pp. 55-56). After the notice of appeal, on March 11, 2022, the district court determined that the suppression hearing transcripts were unavailable. (3/11/22 Other District Court Order) (App. pp. 57-58). The district court requested, to the Iowa Supreme Court, the issue be resolved and completed under Iowa Rule of Appellate Procedure 6.806. (03/11/22 Order) (App. pp. 57-58). On April 28, 2022, the Supreme Court remanded the case to the district court to recreate the record under the Iowa Rule of Appellate Procedure 6.806. (04/28/22 Remand Granted) (App. pp. 59-61). On May 26, 2022, Brown's trial counsel filed

a statement of the evidence under the Iowa Rule of Appellate Procedure 6.806. (05/26/22 Notice: Statement of the Evidence Under Iowa R. App. P 6.806(1)) (App. pp. 62-65). On June 6, 2022, the district court confirmed the recreation of the record was resolved and on June 8, 2022, the Supreme Court lifted the stay of the briefing schedule and ordered a page proof be filed within 30 days. (06/06/22 Other District Court Order; 06/8/22 Order) (App. pp. 66-70). On June 16, 2022, in district court, the State's trial attorney objected to the defense trial counsel's statement of the evidence. (06/16/22 Motion) (App. pp. 71-74). On June 20, 2022, the trial defense counsel objected to the State's objections as untimely. (06/20/22 Notice of Objection to State's Untimely Objection to Statement of Evidence) (App. pp. 75-76). On June 21, 2022, the State responded to the defense counsel's objections. (06/21/22 Notice: Response to Timelessness and Request for Good Cause) (App. pp. 77-78). On June 22, 2022, Brown and his appellate counsel requested another remand to address

the State's objections. (06/22/22 Motion to Stay) (App. pp. 79-82). On June 28, 2022, the Iowa Supreme Court granted the order for a limited remand to the district court. (06/28/22 Order: Remand Granted) (App pp. 83-85). On September 23, 2022, the district court sustained the objections by the State's trial counsel to Brown's proposed record. (09/23/22 Other District Court Order) (App. pp. 86-88). On September 29, 2022, the Iowa Supreme Court lifted the stay of the briefing schedule in the appellate court. (09/29/22 Order) (App. pp. 89-91). On November 17, 2022, Brown requested a limited remand and stay of the appellate briefing schedule because the State nor the defense trial counsel participated in the recreation of the record under Iowa Rule of Appellate Procedure 6.806. (Motion for Limited Remand) (App. pp. 92-98). On December 14, the Supreme Court requested a response to the request for limited remand from the State's appellate counsel. (12/14/22 Order) (App. pp. 99-101). The State's appellate counsel agreed to the remand. (12/16/22

Response) (App. pp. 102-103). On December 14, 2023, the Supreme Court requested a response to the request for limited remand from the State's appellate counsel. (12/14/22 Supreme Court Requests Response from State Appellate Counsel) (App. pp. 99-101). The State's appellate counsel agreed to the remand. (12/16/22 Response) (App. pp. 102-103). On January 10, 2023, the Iowa Supreme Court granted the limited remand and stayed the briefing schedule. (01/10/23 Remand Granted) (App. pp. 104-107). On January 11, 2023, in district court, the district court ordered the State to prepare a proposed recreation of the record. (01/11/23 Other Order) (App. pp. 108-109). On January 24, 2023, the State filed a recreation of the record and a Summary of the Suppression Hearing. (01/24/23 Notice) (App. pp. 115-120). On January 24, 2023, the district court filed a denial of Brown's motion to suppress. (01/24/23 Other Order) (App. pp. 115-120). On March 7, 2023, the Iowa Supreme Court lifted the stay of the briefing schedule and ordered a brief be

filed within 20 days. (03/7/23 Order) (App. pp. 126-128).

### **Facts**

In this case, the retrieval of the complete suppression hearing transcript was impossible. (3/11/22 Other District Court Order) (App. pp. 57-58). The appellate court remanded the case to the district court for the trial parties to attempt to recreate the record. (01/11/23 Order Under Appellate Court) (App. pp. 108-109). The trial attorneys, both State, and defense, submitted individual summaries of the suppression hearing. (01/24/23 State's Recreation and Summary of Suppression Hearing; 05/26/22 Statement of the Evidence) (App. pp. 115-120, 62-65). Both trial parties agreed that there were two testifying witnesses during the suppression hearing: Officers Austin Finley and Dao Meunsavang. Both officers were members of the Des Moines City Police Department. (01/24/23 State's Recreation and Summary of Suppression Hearing; 05/26/22 Statement of the Evidence) (App. pp. 110-114, 62-65). Both parties agreed to the basic facts of the



traffic stop including that on May 25, 2021, Lamont Norris was the driver of a Black Chevy Tahoe. The passenger riding in the front passenger seat of the Tahoe was Tyre Brown. (01/24/23 State's Recreation and Summary of Suppression Hearing; 05/26/22 Statement of the Evidence) (App. pp. 115-120, 62-65). Also, both agreed that Meunsavang's police body camera footage became admitted evidence. (01/24/23 State's Recreation and Summary of Suppression Hearing; 05/26/22 Statement of the Evidence) (App. pp. 115-120, 62-65). Due to the difficulty of recreating the suppression hearing transcript, the body camera footage is the best source of evidence regarding what transpired during the traffic stop between Meunsavang and the occupants of the Tahoe. The video displayed the following interaction:

After Officer Meunsavang stopped a vehicle, he used his police radio and advised dispatch about a traffic stop involving a Black Chevy Tahoe with a Florida license plate occurring near the 1900 block of Arlington Avenue. (State's Exhibit 1 –

01:18). Meunsavag exited his patrol car and approached the driver's side of the Tahoe and requested the driver show his hands. Meunsavang noted that the Tahoe windows were darkly tinted. (State's Exhibit 1 - 01:50). Meunsavang arrived at the driver's side window, which was down. The driver, later identified as Lamont Norris, provided his driver's license, vehicle registration, and rental car documents to Meunsavang. (State's Exhibit 1 - 02:07-02:10). Meunsavang asked Norris about the auto insurance on the rental vehicle. Norris told Meunsavang his car insurance covered the rental and his insurance information was available on his phone. (State's Exhibit 1 - 02:13-02:26). Meunsavang asked Norris where he was traveling from and Norris answered "Here" and then asked the officer for his ticket. (State's Exhibit 1- 02:13-02:26). Meunsavang then asked Norris where his name was on the rental documents and Norris pointed to his name on the form. (State's Exhibit 1- 03:39-03:44). Meunsavang again asked about the insurance on the rental vehicle and Norris told him

that his car insurance carried over and covered the rental car. (State's Exhibit 03:49-03:57). Meunsavang returned to his patrol car. (State's Exhibit 1 – 04:04-04:12). Once Meunsavang got into his patrol car, he radioed to other officers telling them the driver was nervous and anxious and just wanted his ticket. Meunsavang emphasized the word nervous. (State's Exhibit 1- 04:16-04:21). Meunsavang then told dispatch and his reported backup officer that he would wait for another unit "to get here" and then pull the driver out of the car to do a dog sniff. Meunsavang told the backup officer that as soon as the other officer arrived they would pull the occupants out of the vehicle. (State's Exhibit 1 – 04:16-04:28). Meunsavang told the other officer that when he arrived at the scene, he should "run" the driver and start writing the ticket. (State's Exhibit 05:55-06:03). Meunsavang then radioed to other officers that Norris could drive away because Norris' vehicle had 10 feet in front of the car without obstruction. Another officer near the scene told Meunsavang that he would

block in Norris' car. (State's Exhibit 1- 06:22-07:02).

Meunsavang again radioed that the driver was "nervous as hell" and suggested a rouse to get Norris out of the car.

Meunsavang decided to pretend to write a traffic ticket and tell Norris to exit the vehicle to sign the ticket. Once Norris was out of the car, the other officer would handcuff him and place him in front of the patrol unit. Meunsavang and his backup officer would then pull the passenger out. (State's Exhibit 1 – 07:34-08:08). Once backup arrived, Meunsavang exited his patrol car and approached the driver's side of the Tahoe.

(State's Exhibit 1-08:07). Meunsavang started the rouse and told Norris he was issuing a ticket. Meunsavang then told Norris to get out of the car to place his signature on the ticket, which did not exist. (State's Exhibit 1 – 08:17-08:24). Norris questioned why he needed to exit the vehicle to sign a ticket. (State's Exhibit 1- 08:26-08:29). Meunsavang repeated his instructions. Norris again asked why he needed to exit and then Norris rolled up the driver's side window. Meunsavang

threatened to smash the window. Norris again asked why he had to exit the car. (State's Exhibit 1 -08:30-09:07). After opening the car door, Norris asked why was he removed. There was no immediate response. (State's Exhibit 1-09:16-09:24). After he was in handcuffs, Norris continued to ask why while Meunsavang began a pat-down of Norris. (State's Exhibit 1 - 09:37-09:58). Meunsavang told Norris he was only asked to step out to sign a ticket. Meunsavang informed Norris that he was making the traffic stop harder than necessary. (State's Exhibit 1- 10:04-10:18). After Norris exited, was patted down, and handcuffed, a plainclothes officer told Norris that he smelled like marijuana. Norris denied smoking marijuana. (State's Exhibit 1 – 10-16-10:17). Meunsavang then retrieved his K-9 ( from the backseat of the patrol car and performed a K-9 sniff of the Tahoe. (State's Exhibit 1- 10:59-12:01). After the K-9 sniffed, Meunsavang confirmed to other officers that the dog alerted to marijuana in the vehicle. (State's Exhibit 1-12:03-12:05). The Tahoe search

started with several officers searching the front seats, back seats, and truck of the vehicle. (State's Exhibit 1-12:33). Meunsavang observed the smell of marijuana only after opening the driver's side passenger backdoor. (State's Exhibit -12:41-12:42). An officer reported that he located a gun under the front passenger side of the vehicle. The passenger in the vehicle was Tyre Brown. (State's Exhibit- 13:37-13:40). Meunsavang approached the passenger and told him that it could have been a simple ticket, but the driver made him call for backup. Meunsavang does not mention the smell of marijuana as the basis for the search. (State's Exhibit 1 – 16:31-16:32). Later, another officer informed Meunsavang that Brown claimed ownership of the weapon found. (State's Exhibit 1-19:06-19:10). Marijuana is never found in the vehicle. Nearly 18 minutes after the receipt of the driver's information, Meunsavang writes the traffic citation for Norris. (State's Exhibit 1-19:30).

Any additional pertinent facts will be discussed below.

## ARGUMENT

**I. Officer Meunsavang did not have the requisite reasonable suspicion to extend the traffic stop and search the vehicle in which Brown was a passenger. The suppression of the gun found under the passenger was required.**

**Error Preservation:** Brown filed a motion to suppress evidence obtained during a warrantless, unconstitutional search of the vehicle in which Brown was a passenger. Brown argued the improper search of the vehicle violated his constitutional rights under both the Fourth Amendment to the United States Constitution and Article I, section 8 of the Iowa Constitution. Brown also argued that the traffic stop officer extended the search of the vehicle without the proper reasonable suspicion that criminal activity was afoot. (07/30/21 Motion to Suppress) (App. pp. 10-11). The Court denied the motion to suppress. (09/27/21 Denial of Motion to Suppress) (App. pp. 44-45). The error was preserved.

**Standard of Review:** A district court's denial of a motion to suppress based on the deprivation of a constitutional right

is reviewed de novo. State v. Hauge, 973 N.W.2d 453, 458 (Iowa 2022). This review requires ‘an independent evaluation of the totality of circumstances as shown by the entire record.’” State v. Pals, 805 N.W.2d 767, 711 (Iowa 2011). “In doing so, we give deference to the factual findings of the district court due to its opportunity to evaluate the credibility of the witnesses, but are not bound by such findings”. State v. Lane, 726 N.W.2d 371, 377 (Iowa 2007).

**Discussion:** The Fourth Amendment to the United States Constitution and Article I, section 8 of the Iowa Constitution protects persons from unreasonable searches and seizures. U.S. Const. amend. IV; Iowa Const. art. I, § 8. Brown challenges the search of the vehicle under both the Fourth Amendment to the United States Constitution and Article I, section 8 of the Iowa Constitution. (07/30/21 MTS) (App. pp. 10-11). While these provisions use nearly identical language and are generally designed with the same scope, import, and purpose, this Court jealously protects its



authority to follow an independent approach under our state constitution. State v. Ochoa, 792 N.W.2d 260, 267 (Iowa 2010). Iowa’s case law supports that this Court independently construes provisions of the Iowa Constitution that are nearly identical to the federal counterpart. See e.g., Ochoa, 792 N.W.2d at 267; State v. Cline, 617 N.W.2d 277, 285 (Iowa 2000), overruled on other grounds by State v. Turner, 630 N.W.2d 601, 606 (Iowa 2001). Even where a party has not advanced a different standard for interpreting a state constitutional provision, the Court may apply the standard more stringently than federal case law. State v. Bruegger, 773 N.W.2d 862, 883 (Iowa 2009). “When both the federal and state constitutional claims are raised, we may, in our discretion, choose to consider either claim first to dispose of the case, or we may consider them both simultaneously”. State v. Ochoa, 792 N.W.2d 260, 267-4 (Iowa 2010).

Warrantless searches and seizures are per se unreasonable unless the State proves by a preponderance of the evidence

that a recognized exception to the warrant requirement applies. Katz v. United States, 88 S. Ct 507, 514 (1967); State v. Showalter, 427 N.W. 2d 166 (Iowa 1988); See also State v. Kreps, 650 N.W.2d 636, 641 (Iowa 2002). Traffic stops fit an exception if officers “have probable cause or reasonable suspicion to believe the motorist violated a traffic law”. State v. Brown, 930 N.W.2d 840, 845 (Iowa 2019). The detention of an individual during a traffic stop, even if brief and for a limited purpose, is a seizure within the meaning of the Fourth Amendment. See State v. Kreps, 650 N.W.2d 636, 641 (Iowa 2002). “[I]t is well settled that a traffic violation, however minor, gives an officer probable cause to stop a motorist” and is, therefore, a reasonable seizure. State v. Aderholdt, 545 N.W.2d 559, 563 (Iowa 1996). It is the State’s burden to prove by a preponderance of the evidence that a warrantless search or seizure falls into one of the exceptions. State v. McGrane, 733 N.W.2d 671, 676 (Iowa 2007). In this case, on the video footage of the traffic stop, Meunsavang told his fellow officers

he observed the driver of the Black Chevy Tahoe crossing the center line into oncoming traffic. (State's Ex. 1 - 7:35-8:08). Brown concedes that when a vehicle crosses the center line it is a traffic violation and provides probable cause to initiate a traffic stop, which was done in this case. However, to be constitutionally valid, seizures must be limited in both scope and duration. Florida v. Royer, 460 U.S. 491, 500 (1983). The scope of a seizure "must be carefully tailored to its underlying justification", and the government bears the burden to "demonstrate that the seizure it seeks to justify...was sufficiently limited in scope and duration to satisfy the conditions of an investigate seizure. Id. at 500. After a vehicle is lawfully stopped, only inquiries reasonably related to the mission of addressing the traffic infraction "and attend[ing] to related safety concerns" are permissible. See Rodriguez v. United States, 575 U.S. 348, 354 (2014); Illinois v. Caballes, 543 U.S. 405, 407 (2005); and State v. Aderholt, 545 N.W.2d 559, 563-564 (Iowa 1996). Traffic stops become

unconstitutional when an officer has no reasonable suspicion to believe that criminal activity unrelated to the purposes of the underlying stop is afoot and the police expand inquiries into unrelated subjects. State v. Pals, 805 N.W.2d 767, 775 (Iowa 2011). About traffic stops, the Iowa Supreme Court has held “[o]nce a lawful stop is made, an officer may conduct an investigation reasonably related in scope to the circumstances which justified the interference in the first place”. State v. Aderholdt, 545 N.W.2d 559, 563 (Iowa 1996). The Iowa Supreme Court has recognized, “[a] reasonable investigation includes asking for the driver’s license and registration, requesting that the driver sits in the patrol car, and asking the driver about his destination and purpose”. State v. Aderholdt, 545 N.W.2d 559, 563-564 (Iowa 1996) (quoting United States v. Murillo-Salgado, 854 F.3d 407, 414-415 (8<sup>th</sup> Cir 2017)). See also Rodriguez v. United States, 575 U.S. 348, 354 (2014) (quoting Illinois v. Caballes, 543 U.S. 405, 408 (2005)) (“Beyond determining whether to issue a traffic ticket, an

officer’s mission includes ‘ordinary inquiries incident to the [the traffic] stop.’”); Delaware v. Prouse, 440 U.S. 648, 658-659 (1979) (license and registration checks ensure safe operation of vehicles). Ultimately, the mission of the stop is to address the traffic infraction and “may ‘last no longer than is necessary to effectuate th[at] purpose.’” Rodriguez v. United States, 575 U.S. 348, 354 (2014) (quoting Florida v. Royer, 460 U.S. 491, 500 (1983)). The reasonable investigation, however, may be expanded to satisfy suspicions of criminal activity unrelated to the traffic infraction based on responses to reasonable inquiries. State v. Aderholt, 545 N.W.2d 559, 564 (Iowa 1996). But the officer must identify ‘specific and articulable facts which, taken together with rational inferences from those facts’, amount to reasonable suspicion that further investigation is warranted”. United States v. Murillo-Salgado, 854 F.3d 407, 415 (8<sup>th</sup> Cir 2017) (quoting United States v. Woods, 829 F.3d 675, 679 (8<sup>th</sup> Cir. 2016)). The Court evaluates the existence of reasonable suspicion based on the

totality of the circumstances confronted by the officer. See State v. McIver, 858 N.W.2d 699, 702 (Iowa 2015).

This is not to say that law enforcement may prolong the stop indefinitely. State v. Salcedo, 935 N.W.2d 572, 578 (Iowa 2019). An officer may not develop reasonable suspicion of other criminal activity only by prolonging the initial stop beyond the time reasonably necessary to execute the traffic violation warnings. In re Pardee, 872 N.W.2d 384, 391 (Iowa 2015). “Authority for the seizure... ends when tasks tied to the traffic infraction are – or reasonably should have been completed”. Id. at 392 (quoting Rodriguez v. United States, 575 U.S. 348, 354 (2014)). Addressing the traffic infraction is the purpose of the stop and “it may ‘last no longer than is necessary to effectuate th[at] purpose.’” Rodriguez v. United States, 575 U.S. 348, 357 (2014) (quoting Florida v. Royer, 460 U.S. 491, 500 (1983)).

In the present case, Brown argues that it was improper for Meunsavang to extend the detention of both the driver and

passenger of the vehicle to create a rouse to remove the individuals from the vehicle. This improper rouse was an effort to find criminal violations beyond the reason for the traffic violation without any reasonable suspicion that the criminal activity was afoot. Brown argues that a driver being nervous or anxious is not enough to create reasonable suspicion and extend the stop. The best evidence to establish Meunsavang's improper extension is the officer's body camera footage, especially since a wholly accurate recreation of the suppression transcript was not available. See Cedar Rapids Community School Dist. v. Pease, 807 N.W.2d 839, 849 (Iowa 2011) (“[w]e acknowledge the video does tend to impeach the credibility of Pease ... It was the duty of the commissioner, however, to weigh the evidence as a whole ...”); State v. Mohr, No. 19-0070, 2020 WL 564907, at \*2 (Iowa Ct. App. Feb. 5, 2020)(stating video evidence is one factor to evaluate; finding this is “not a case in which the video evidence contradicts the officer's testimony.”); State v. Ripperger, No. 14-2108, 2016

WL 146525, at \*2 (Iowa Ct. App. Jan. 13, 2016) (“the video from the officer’s patrol car does not corroborate his testimony.”); State v. Wilkerson, No. 11-1522, 2012 WL 2819369, at \*2-3 (Iowa Ct. App. July 11, 2012)( the deputy “acknowledged the recording does not confirm his description of Wilkerson’s driving”; finding an “objective review of the totality of the circumstances requires [the Court] to find the evidence is insufficient to raise reasonable suspicion ...”); State v. Despenas, No. 21-1775, 2023 WL 2396460, at \*4 (unpublished table decision) (“[O]ur confidence in an officer's observations is determined by the totality of circumstances.”); State v. Akers, No. 17-0577, 2018 WL 1182616, at \*2–3 (Iowa Ct. App. March 7, 2018) (unpublished table decision) (assessing officer’s credibility by comparing his testimony to video of the encounter).

Here, the video shows that after Meunsavang spoke with the driver and obtained his license and registration, he did nothing more to investigate the traffic violation. Meunsavang



did not question the driver about the traffic infractions. After briefly speaking with the driver, Meunsavang did not return to the car and begin to enter the driver's information into his computer. He did not begin the process of creating a traffic citation or warning. Meunsavang did not issue the ticket, until nearly 20 minutes after the start of the traffic stop and more than 18 minutes after retrieving the driver's vehicle and license information. (State's Exhibit 1-19:30). The only step that Meunsavang took was to immediately radio for assistance from fellow officers to remove the driver and passenger from the Tahoe. On the radio, Meunsavang explained that the driver was anxious and nervous and because of that he wanted to remove the occupants and search the vehicle with his K-9. (State's Exhibit 1 – 07:35-08:08). Meunsavang did not mention that he smelled marijuana emanating from the vehicle or that the driver was making furtive movements to dispatch or his fellow officers. The information that Meunsavang did articulate: the driver's nervousness and

anxiousness is not enough to rise to reasonable suspicion of other criminal activity. See In re Pardee, 872 N.W.2d 384, 394 (Iowa 2015) (citing United States v. Guerrero, 374 F. 3d 584, 590 (8<sup>th</sup> Cir. 2004)). (Many motorists slow, down, decline eye contact, and *get nervous* when a state trooper draws near). (emphasis added). See also State v. Salcedo, 935 N.W.2d 572, 579 (Iowa 2019) (citing U.S. v. Beck, 140 F.3d 1129, 1137 (8<sup>th</sup> Cir. 1998)) (car rented by a third party not present, licenses in California, presence of fast-food wrappers, no luggage in the passenger compartment, *nervous demeanor* or motorist, the trip from drug-source state to drug demand state, and disbelief of travel plans did not generate reasonable suspicion) (emphasis added).

Here, the body camera footage does show Meunsavang and another officer discussing Meunsavang's plan to force Norris to exit the vehicle. It was determined that Meunsavang would create a rouse and pretend to write a citation and inform Norris he must exit the vehicle to sign the ticket.

Meusavang. (State's Exhibit 1- 07:34-08:05). Meunsavang did execute the rouse and forced Norris out of the vehicle all while Norris questioned why he had to exit to sign a citation. (State's Exhibit 1- 08:26-08:29). Meunsavang's action also forced the passenger to exit the vehicle. (State's Exhibit 1- 07:34-08:08; 13:37-13:40; 16:31-16:32). This rouse, created by Meunsavang was all to remove the driver and passenger so officers could find a reason to further investigate and arrest the two occupants of the car. The rouse was not based on Meunnsavang's belief that additional criminal activity, outside of the traffic violation, was happening. The video footage can support this determination that Meunsavang did not have adequate reasonable suspicion. After both Norris and Brown exited the vehicle, Meunsavang never mentioned the smell of marijuana or any other possible criminal activity. Instead, the possible smell of marijuana only comes up after Norris and Brown have exited the vehicle and are in handcuffs. The only officer to discuss marijuana is an officer not involved in the

initial traffic stop, but rather one who arrived at the scene much later. (State's Exhibit 1 -10:17).

In this case, Meunsavang provided no facts that established the requisite reasonable suspicion needed to extend the stop beyond the underlying traffic violation. The body camera footage supports Brown's position that Meunsavang improperly extended the search. Without any reasonable suspicion that criminal activity was occurring, Meunsavang had no reason to extend the stop and the subsequent search was improper. Therefore, the gun found on the passenger side during the search should have been suppressed as well as the statements of Brown admitting that the gun was his.

### **CONCLUSION**

For all the above reasons, the defendant requests this court reverse his conviction and remand.

### **NONORAL SUBMISSION**

Oral submission is not requested unless this Court believes it may be of assistance in the resolution of the issue presented.

### **ATTORNEY'S COST CERTIFICATE**

The undersigned, hereby certify that the true cost of producing the necessary copies of the foregoing Brief and Argument was \$4.50, and that amount has been paid in full by the Office of the Appellate Defender.

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