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IN THE SUPREME COURT OF IOWA
Supreme Court No. 22-0023
Polk County No. AGCR348955

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STATE OF IOWA,
Plaintiff-Appellee,

vs.

TYRE BROWN,
Defendant-Appellant.

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APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE ODELL G. MCGHEE II, JUDGE

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# APPELLEE'S BRIEF

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## STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

**I. Whether the district court correctly denied Brown's motion to supress the discovery of the handgun found under the passenger seat**

**Authorities**

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*Illinois v. Caballes*, 543 U.S. 405 (2005)
*Johnson v. United States*, 333 U.S. 10 (1948)
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U.S. Const. amend. IV
Iowa Const. art. I, § 8

## ROUTING STATEMENT

This case should be transferred to the Court of Appeals, as it involves the application of existing legal principles. Iowa R. App. P. 6.1101(3)(a).

## STATEMENT OF THE CASE

### Nature of the Case

Tyre Brown appeals his conviction for carrying a firearm, an aggravated misdemeanor in violation of Iowa Code section 724.4(1), following a trial on the minutes. Brown argues on appeal that the district court erred when it denied his motion to suppress evidence on the basis the underlying traffic stop had been unconstitutionally extended both in time and scope.

### Course of Proceedings

The State generally accepts Defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

However, the State believes the post-appeal procedural history of this case requires additional explanation. Brown accurately notes that after transcripts were ordered on appeal, the district court determined that the shorthand notes of the hearing on Brown's motion to supress were not capable of being transcribed, despite the best efforts made by multiple court reporters. 3/11/2022 Order, Dkt.

No. 57; App. 57–58. And while Brown has also accurately described much of the prolonged jurisdictional back-and-forth that followed, the way the issue was ultimately resolved is crucial to this Court's review of the record on appeal.

When the Supreme Court repeatedly remanded the case to the district court, it did so for the express purpose of allowing the parties and the district court to collectively recreate the record of the suppression hearing pursuant to Iowa Rule of Appellate Procedure 6.806. *See* 4/28/2022 Supreme Court Order, Dkt. No. 61; App. 59–61; 6/28/2022 Supreme Court Order, Dkt. No. 70; App. 83–85; 1/10/2023 Supreme Court Order, Dkt. No. 81; App. 104–107. And yet, Brown's statement of proceedings concludes by characterizing the district court's final, January 24, 2023, order as an order denying his motion to supress. Appellant's Br. at 15. This description is both true and potentially misleading.

The purpose of the district court's January 24, 2023, order was not simply to expound upon its earlier suppression ruling, but also to reconcile the parties' competing recreations of the record, as contemplated by Iowa Rule of Appellate Procedure 6.806(3). 1/24/2023 District Court Order, Dkt. No. 84; App. 110–114. Indeed,

the explicit instruction given by the Supreme Court when it remanded the case the final time was that "[w]ithin 30 days of the filing of the [State's 6.806] statement, the district court judge who presided over the suppression hearing shall reconcile the statements filed by the parties." 1/10/2023 Supreme Court Order, Dkt. No. 81, at 2; App. 105. Thus, the district court's final order serves not only as a supplement to its earlier order denying Brown's motion to supress, but also, *crucially*, as the most definitive account of the suppression hearing now available for appellate review. The district court found that the parties' 6.806 statements were "basically congruent" and should be read together with the court's findings. 1/24/2023 District Court Order, Dkt. No. 84, at 1; App. 110.

**Facts**

Tyre Brown admitted to Des Moines police officers he owned the handgun they discovered underneath the front passenger seat of a Chevy Tahoe where he had been sitting. State's 6.806 Statement, Dkt. No. 83, at 4; App. 118; 1/24/2023 District Court Order, Dkt. No. 84, at 2–3; App. 111–112.

Des Moines Police Officer Dao Meunsaveng conducted the traffic stop that led to the discovery of the firearm. State's 6.806

Statement, Dkt. No. 83, at 3; App. 117; 5/25/2021 Supplemental Report, Dkt. No. 83 Attachment; App. 120; 1/24/2023 District Court Order, Dkt. No. 84, at 1–2; App. 110–111. Officer Meunsaveng conducted that traffic stop at the behest of Des Moines Police Officer Austin Finley, who had been investigating the Tahoe's driver for distribution and sale of narcotics. State's 6.806 Statement, Dkt. No. 83, at 1; App. 115; 5/25/2021 Supplemental Report, Dkt. No. 83 Attachment; App. 120; 1/24/2023 District Court Order, Dkt. No. 84, at 1–2; App. 110–111. Both Officer Finley and Officer Meunsaveng testified at the suppression hearing. State's 6.806 Statement, Dkt. No. 83, at 1; App. 115; Defendant's 6.806 Statement, Dkt. No. 62, at 1; App. 62.

Officer Finley testified that he was assigned to the Vice/Narcotic Unit on May 25, 2021, which meant that he was in an unmarked vehicle and in plain clothes. State's 6.806 Statement, Dkt. No. 83, at 1; App. 115. On that date, Officer Finley observed the subject of a drug trafficking investigation place a backpack in the back seat of a black Chevy Tahoe and then get into the driver's seat. State's 6.806 Statement, Dkt. No. 83, at 2; App. 116; 1/24/2023 District Court Order, Dkt. No. 84, at 2; App. 111. Officer Finley observed Tyre

Brown get into the passenger seat of the vehicle. State's 6.806 Statement, Dkt. No. 83, at 2; App. 116.

Officer Finley testified he followed the vehicle and observed what he knew, based on his training and experience, to be a street-level narcotics transaction. State's 6.806 Statement, Dkt. No. 83, at 2; App. 116; 1/24/2023 District Court Order, Dkt. No. 84, at 2; App. 111. Officer Finley then watched as the black Chevy Tahoe crossed the center line into oncoming traffic. State's 6.806 Statement, Dkt. No. 83, at 2; App. 116; 1/24/2023 District Court Order, Dkt. No. 84, at 2; App. 111. Officer Finley testified that despite the fact his observations served as a lawful basis for him to conduct a traffic stop, he preferred that an officer in a marked squad car make the stop. State's 6.806 Statement, Dkt. No. 83, at 2; App. 116.

Officer Meunsaveng testified that he was on duty in a marked patrol vehicle with his K9 unit when Officer Finley asked him to assist by stopping the black Chevy Tahoe. State's 6.806 Statement, Dkt. No. 83, at 3; App. 117; 5/25/2021 Supplemental Report, Dkt. No. 83 Attachment; App. 120. Officer Meunsaveng smelled an odor of marijuana coming from the vehicle during his initial contact with the driver, who Officer Meunsaveng described as nervous. State's 6.806

Statement, Dkt. No. 83, at 3; App. 117; 5/25/2021 Supplemental Report, Dkt. No. 83 Attachment; App. 120. Based upon both his knowledge of the ongoing narcotics investigation and his own firsthand observations of the odor of marijuana and the nervousness of the driver, Officer Meunsaveng decided to wait for backup before conducting any further investigation. State's 6.806 Statement, Dkt. No. 83, at 3; App. 117; 5/25/2021 Supplemental Report, Dkt. No. 83 Attachment; App. 120.

Once backup arrived, Officer Meunsaveng re-engaged with the driver of the black Chevy Tahoe and after a brief standoff—the driver was uncooperative and rolled up his window—both occupants were removed from the vehicle. State's 6.806 Statement, Dkt. No. 83, at 3; App. 117; 5/25/2021 Supplemental Report, Dkt. No. 83 Attachment; App. 120. The driver was handcuffed immediately upon exiting the vehicle. State's Ex. 1 (Officer Meusaveng bodycam video) at 9:20.[1]

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[1] The record is not entirely clear regarding the numbers assigned to exhibits offered by the State at the suppression hearing. Officer Meusaveng's bodycam footage is located on a physical CD contained in a protective sleeve within a larger manilla envelope that are both labelled "State's Exhibit 1." However, according to Brown's Rule 6.806 statement of the evidence (Dkt. No. 62), this footage was entered as State's Exhibit 3. The State will refer to the bodycam footage as State's Exhibit 1 to remain consistent with both the labels on the physical evidence and also the citations in Appellant's brief.

Officer Meusaveng then walked his K9 unit, Bero, around the black Chevy Tahoe. State's 6.806 Statement, Dkt. No. 83, at 4; App. 118; 5/25/2021 Supplemental Report, Dkt. No. 83 Attachment; App. 120. The K9 alerted to the presence of narcotics. State's 6.806 Statement, Dkt. No. 83, at 4; App. 118; 5/25/2021 Supplemental Report, Dkt. No. 83 Attachment; App. 120. Officers then conducted a search of the vehicle, which revealed both marijuana and US currency. State's 6.806 Statement, Dkt. No. 83, at 4; App. 118; 5/25/2021 Supplemental Report, Dkt. No. 83 Attachment; App. 120. The search also led to the discovery of the handgun under the front passenger seat that Brown admitted was his. State's 6.806 Statement, Dkt. No. 83, at 4; App. 118; 5/25/2021 Supplemental Report, Dkt. No. 83 Attachment; App. 120.

## ARGUMENT

### I. The district court correctly denied Brown's motion to supress the discovery of the handgun found under the passenger seat.

#### Preservation of Error

The State does not dispute error preservation. Brown made the same argument in favor of suppression before the district court, and the district court denied his motion following a hearing on the motion. *See* Def.'s Motion to Suppress, Dkt. No. 21; App. 10–11;

1/24/2023 District Court Order, Dkt. No. 84; App. 110–114. Obtaining a ruling from the district court preserved error. *See, e.g.*, *Lamasters v. State*, 821 N.W.2d 856, 862 (Iowa 2012).

The Court may affirm, however, on any ground presented to the district court, including any "proper ground urged but not relied on by the district court." *DeVoss v. State*, 648 N.W.2d 56, 62 (Iowa 2002).

**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)). The reviewing 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). When conducting this independent evaluation, the reviewing court 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." *State v. Brown*,

890 N.W.2d 315, 321 (Iowa 2017) (quoting *In re Prop. Seized from Pardee*, 872 N.W.2d 384, 390 (Iowa 2015)).

**Merits**

The Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution both safeguard the right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Iowa Const. art. I, § 8. "Subject to a few carefully drawn exceptions, warrantless searches and seizures are per se unreasonable." *State v. Lewis*, 675 N.W.2d 516, 522 (Iowa 2004).

Traffic stops by police officers constitute seizures within the meaning of the United States and Iowa Constitutions. *See, e.g.*, *Hague*, 973 N.W.2d at 459–60 (citing *State v. Warren*, 955 N.W.2d 848, 859 (Iowa 2021). Therefore, because warrantless searches and seizures are generally proscribed, traffic stops must fall within one of the carefully drawn exceptions to the general rule if they are to comport with the strictures of both Constitutions. "The [United States] Supreme Court has recognized a 'specifically established and well-delineated' exception to the warrant requirement for searches of automobiles and their contents." *State v. Allensworth*, 748 N.W.2d 789, 792 (Iowa 2008) (quoting *California v. Acevedo*, 500 U.S. 565,

581 (1991)). The automobile exception "is applicable when probable cause and exigent circumstances exist at the time the car is stopped by police," although in practice the two requirements are really just one because "[t]he inherent mobility of motor vehicles satisfies the exigent-circumstances requirement." *State v. Storm*, 898 N.W.2d 140, 145, 147–48 (Iowa 2017) (quoting *State v. Holderness*, 301 N.W.2d 733, 736–37 (Iowa 1981)).

The relevant question, then, is whether an officer has probable cause to stop and search a vehicle. An officer has probable cause to search a vehicle "'when the facts and circumstances would lead a reasonably prudent person to believe that the vehicle contains contraband.'" *State v. Hoskins*, 711 N.W.2d 720, 726 (Iowa 2006) (quoting *State v. Gillespie*, 619 N.W.2d 345, 351 (Iowa 2000)). Put another way, the probable cause needed by an officer to search a car "must be based on facts that would justify a magistrate to issue a warrant, even though the officers [did] not actually obtain[ ] a warrant." *Hoskins*, 711 N.W.2d at 726. "A probable cause finding rests on a nexus between the criminal activity, the place to be searched, and the items to be seized." *Id.*

The facts and circumstances justifying a vehicle search consist of a synthesis of everything the officer has heard, everything the officer knows, and everything the officer observes. *Id.* Furthermore, Iowa courts recognize the shared-knowledge doctrine, which presumes the knowledge of one peace officer, when acting in concert with others, is shared by all. *Rife v. D.T. Corner, Inc.*, 641 N.W.2d 761, 770 (Iowa 2002). "This shared-knowledge doctrine allows one officer to make an arrest without knowledge of all the predicate elements to support an arrest as long as other officers involved have the predicate knowledge." *Id.*

Here, Brown concedes Officer Meunsevang had probable cause to stop the black Chevy Tahoe, based on the observed traffic violation. Appellant's Br. at 26–27. *See also State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004) ("When a peace officer observes a violation of our traffic laws, however minor, the officer has probable cause to stop a motorist."). But, he argues, because Officer Meusevang lacked a lawful basis to expand either the duration or scope of the traffic stop beyond that necessary to cite the driver for the observed traffic violation, the initially-lawful traffic stop transformed into an

unconstitutional seizure, rendering the subsequent search and discovery of the firearm under his seat improper.[2] *Id.* at 36.

"A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). In other words, a lawful traffic stop may not be prolonged for the purpose of conducting unrelated investigations without an officer first forming adequate suspicions of other criminal activity apart from the original traffic purpose of the stop. *See, e.g.*, *State v. Salcedo*, 935 N.W.2d 572, 578–80 (Iowa 2019). Thus, although a dog sniff conducted

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[2] The State does not dispute Brown has standing to challenge the stop of the vehicle he was a passenger in. *See State v. Eis*, 348 N.W.2d 224, 226–27 (Iowa 1984). However, to the extent Brown is attacking the subsequent search of the vehicle, then this Court could affirm the district court's ruling on the alternative basis that Brown does not have standing to object to a search of a vehicle in which he was "merely a passenger." *See State v. Burks*, No. 17-0450, 2018 WL 27316300, at *2–3 (Iowa Ct. App. June 6, 2018) (quoting *State v. Haliburton*, 539 N.W.2d 339, 342 (Iowa 1995). While the district court order denying Brown's motion to suppress directly addressed and rejected the issue he now raises on appeal, the same order also found Brown had no standing as to the search because he had no reasonable expectation of privacy in the interior areas of the black Chevy Tahoe, and thus had no cognizable Fourth Amendment interest to be violated by an unconstitutional search of the vehicle. 1/24/2023 District Court Order, Dkt. No. 84, at 2–3; App. 111–112.

during a traffic stop that is "lawful at its inception and otherwise executed in a reasonable manner" does not infringe on a constitutionally protected privacy interest, s*ee Caballes*, 543 U.S. at 408, an officer may not prolong a seizure solely to have a K9 conduct a free-air sniff absent reasonable suspicion. *Rodriguez v. United States*, 575 U.S. 348, 354–55 (2015). *See also In re Pardee*, 872 N.W.2d 384, 393 (Iowa 2015).

The district court rightly rejected Brown's argument that the traffic stop was unlawfully extended. For one thing, Brown's entire claim is built upon the faulty premise that the stop had initially been based solely on an observed traffic violation. Brown's incomplete factual recitation ignores the fact Officer Meunsaveng only became involved at the behest of Officer Finley, who had been investigating the vehicle's driver for drug trafficking and had just witnessed a hand-to-hand drug transaction. The district court correctly noted these facts when rejecting Brown's claim. 1/24/2023 District Court Order, Dkt. No. 84, at 2; App. 111 ("This Court finds that law enforcement has sufficient probable cause to stop the vehicle in that they had evidence that [the driver] was involved in drug dealing, saw him conduct a purported sale/purchase on the streets, and further

saw [the driver] involved in a traffic violation."); at 3; App. 112 ("It is true that the stopping officer extended the stop so that other officers could arrive. However it seems that because of the narcotic investigation and street sale, they had already made a decision to arrest the driver. The wait was not unreasonable considering all of the circumstances.").

Because the stop was based not only on a traffic violation, but also on evidence of possession and sale of drugs, the cases cited above simply do not apply—this Court should hold that the legal scope and duration of the stop were, from the beginning, inclusive of the time necessary to conduct a K9 sniff and search the vehicle for evidence related to possession and sales of narcotics. *See, e.g.*, *State v. Baker*, 925 N.W.2d 602, 612–13 (Iowa 2019) (finding a district court did not err in denying motion to supress evidence obtained as a result of a traffic stop, where the traffic stop resulted from an anonymous tip of drug trafficking which led to targeted surveillance, which in turn led to officers watching the target leave his residence and engage in a hand-to-hand drug transaction).

But even if Brown's underlying premise was not faulty, his claim would still be doomed to fail because a lawful justification to expand

the scope of the traffic stop existed as soon as Officer Meunsaveng smelled an odor of marijuana emanating from the vehicle. *See, e.g.*, *Johnson v. United States*, 333 U.S. 10, 13 (1948) (determining that the presence of an odor "sufficiently distinctive to identify a forbidden substance" is sufficient to establish probable cause for a search warrant); *State v. Watts*, 801 N.W.2d 845, 854 (Iowa 2011) ("Our court has followed th[e] reasoning [of *Johnson v. United States*] and held that a trained officer's detection of a sufficiently distinctive odor, by itself or when accompanied by other facts, may establish probable cause."); *State v. Eubanks*, 355 N.W.2d 57, 59 (Iowa 1984) ("The patrolman smelled the odor of marijuana drifting from the car when he approached defendant, who was seated behind the steering wheel. The odor of that controlled substance in the automobile gave the patrolman reasonable cause to conduct a comprehensive search of the car."). Once Officer Meunsaveng smelled the odor of marijuana, he had probable cause to search the vehicle. That Officer Meunsaveng chose to wait for backup before further engaging with the occupants of the black Chevy Tahoe is irrelevant to the constitutional analysis.

Brown attempts to evade this unavoidable conclusion by ignoring and/or downplaying Officer Meunsaveng's testimony. By

focusing almost exclusively on what can be seen and heard in the video footage of the traffic stop, Brown seeks to obfuscate the context of much of that visual and audio content. For example, he uses the bodycam footage to assert that "Officer Meunsaveng observed the smell of marijuana only after opening the driver's side passenger backdoor." Appellant's Br. at 22. But what the video actually shows is multiple police officers, including plainclothes officers with the Vice/Narcotics Unit, repeatedly commenting to each other about how strong the odor of marijuana was inside the car. State's Ex. 1 (Officer Meusaveng bodycam video) at 12:40; 14:33; 18:48. The presence of such a strong odor lends credibility to Officer Meunsaveng's testimony he had previously detected the odor.

Similarly, Brown focuses on the fact that Officer Meunsaveng talks over the radio about how nervous the driver seemed during their initial encounter, suggesting that the driver's nervousness was the only potential basis for extending the stop. Appellant's Br. at 33–35. But this ignores both Officer Meunsaveng's personal detection of the odor of marijuana and Officer Finley's knowledge related to the driver's drug-related activities, which is imputed to Officer Meunsaveng through application of the shared-knowledge doctrine.

Based on consideration of all the facts and circumstances properly before the district court at the suppression hearing, the district court correctly rejected Brown's argument that the traffic stop was unlawfully extended in either duration or scope. As a result, the district court correctly denied Brown's motion to suppress the discovery of the handgun found under the passenger seat.

## CONCLUSION

For the reasons stated above, this Court should affirm the district court's denial of Brown's motion to suppress. Brown's conviction and sentence should be affirmed.

## REQUEST FOR NONORAL SUBMISSION

The State requests that this case be submitted without oral argument.

Respectfully submitted,

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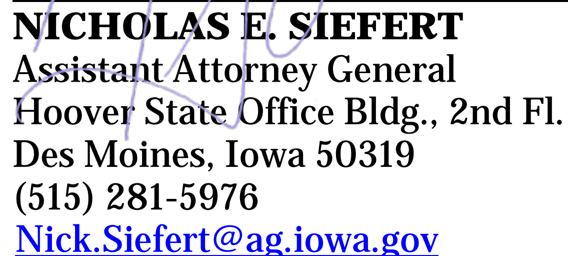

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## CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **3,471** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: October 2, 2023

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