

IN THE SUPREME COURT OF IOWA

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STATE OF IOWA,

Plaintiff,

v.

TYRE BROWN,

Defendant-Appellant.

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S.CT. NO. 22-0023

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

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APPLICANT'S APPLICATION FOR FURTHER REVIEW  
OF THE DECISION OF THE IOWA COURT OF APPEALS  
FILED DECEMBER 20, 2023

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## **QUESTION 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?**

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## **STATEMENT IN SUPPORT OF FURTHER REVIEW**

The Court of Appeals erroneously decided that Brown was not subjected to an unconstitutional search when officers extended the search of his vehicle. In this case, the chief evidence was body camera video footage from the police officer who initially stopped the vehicle. The Court of Appeals neglected to properly evaluate the evidence in which the officer can clearly be heard creating reasons to expand the search in order to hold the driver and passenger at the scene and keep them seized beyond the initial traffic violation. The Court of Appeals should have relied on the real time evidence to determine that Brown's constitutional rights were violated and all evidence found should have been suppressed. The Supreme Court should grant further review and vacate the decision of the Court of Appeals and district court.

## **STATEMENT OF THE CASE**

### **Nature of Case**

Defendant-Appellant Brown seeks further review from the Court of Appeals opinion issued on December 20, 2023.

Brown respectively contends that the Court of Appeals incorrectly affirmed his conviction for Carrying Weapons, in violation of Iowa Code section 724.4(1) (2022).

### **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. Meunsvang 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).

Muensavang 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.**

**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, 2674 (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.

## **ATTORNEY'S COST CERTIFICATE**

The undersigned, hereby certify that the true cost of producing the necessary copies of the foregoing Application for Further Review was \$0.00, and that amount has been paid in full by the Office of the Appellate Defender.

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE  
REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR  
FURTHER REVIEWS**

This application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because:

[X] this application has been prepared in a proportionally spaced typeface using Bookman Old Style, font 14 point and contains 3,493 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a).



Dated: 01/05/24

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