ELECTRONICALLY FILED FEB 12, 2024 CLERK OF SUPREME COURT

IN THE SUPREME COURT OF IOWA

STATE OF IOWA, Plaintiff-Appellee, v. PATRICK WAYMAN SCULLARK JR., Defendant-Appellant.	SUPREME COURT NO. 23-1218

APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
THE HONORABLE LINDA M. FANGMAN, JUDGE

APPELLANT'S BRIEF AND ARGUMENT AND REQUEST FOR ORAL ARGUMENT

MARTHA J. LUCEY
State Appellate Defender

JOSH IRWIN
Assistant Appellate Defender
jirwin@spd.state.ia.us
appellatedefender@spd.state.ia.us

STATE APPELLATE DEFENDER'S OFFICE
6200 Park Avenue
Des Moines, Iowa 50321
(515) 281-8841 / (515) 281-7281 FAX

ATTORNEYS FOR DEFENDANT-APPELLANT

TABLE OF CONTENTS

Page

Table of Authorities 4

Statement of the Issue Presented for Review................... 6

Routing Statement 9

Statement of the Case 9

Jurisdictional Statement 13

Argument

The district court erred in denying Scullark's motion to suppress, because the warrantless police search was conducted in violation of the Fourth Amendment to the United States Constitution and Article I, section 8 of the Iowa Constitution 16

A. The search incident to arrest exception does not apply because Scullark could not access the bag when officers searched it 20

B. The search incident to arrest exception does not apply because the State failed to establish officers were looking for a weapon or for evidence of the offense of the arrest 24

Conclusion 28

Request for Oral Argument 28

Attorney's Cost Certificate 29

Certificate of Compliance... 29

TABLE OF AUTHORITIES

<u>Cases</u>: <u>Page</u>:

Arizona v. Gant, 556 U.S. 332 (2009) 18-20, 24, 26-28

Chimel v. California, 395 U.S. 752 (1969)................. 18-19, 24

River Excursions, Inc. v. City of Davenport,
359 N.W.2d 475 (Iowa 1984) 14

State v. Allen, No. 06-1770, 2007 WL 2964316
(Iowa Ct. App. Oct. 12, 2007) 22-23

State v. Baldon, 829 N.W.2d 785 (Iowa 2013)................ 20

State v. Breuer, 577 N.W.2d 41 (Iowa 1998) 17

State v. Damme, 944 N.W.2d 98 (Iowa 2020)................. 14

State v. Gaskins, 866 N.W.2d 1 (Iowa 2015)........ 19-21, 26, 28

State v. Jones, No. 02-1972, 2003 WL 22699655
(Iowa Ct. App. Nov. 17, 2003) 22-23

State v. Lovig, 675 N.W.2d 557 (Iowa 2004).................16-17

State v. McGrane, 733 N.W.2d 671 (Iowa 2007)............. 24

State v. Ochoa, 792 N.W.2d 260 (Iowa 2010)................. 20

State v. Pals, 805 N.W.2d 767 (Iowa 2011) 17, 20

State v. Saxton, No. 14-0124, 2014 WL 7343522
(Iowa Ct. App. Dec. 24, 2014) 23

State v. Short, 851 N.W.2d 474 (Iowa 2015) 20

State v. Treptow, 960 N.W.2d 98 (Iowa 2021) 16

State v. Veverka, 938 N.W.2d 197 (Iowa 2020) 14

State v. Watts, 801 N.W.2d 845 (Iowa 2011).................. 18

Thornton v. United States, 541 U.S. 615 (2004) 28

United States v. Graham, 638 F.2d 1111
(7th Cir. 1981)... 25

United States v. Robinson, 414 U.S. 218, (1973) 18

Walters v. State, No. 12-2022, 2014 WL 69589,
(Iowa Ct. App. Jan. 9, 2014)... 14

Constitutional Provisions:

U.S. Const. amend. IV... 18

Iowa Const. art. I, § 8.. 18

Court Rules & Statutes:

Iowa Code § 814.6(3) 13

Iowa R. Crim. P. 2.8(2)(b)(9)... 13

Other Authorities:

Interests of Justice, Black's Law Dictionary
(11th ed. 2019).. 14

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Jurisdictional Statement

Iowa R. Crim. P. 2.8(2)(b)(9)

Iowa Code § 814.6(3)

State v. Damme, 944 N.W.2d 98, 104 (Iowa 2020)

Interests of Justice, *Black's Law Dictionary* (11th ed. 2019)

State v. Veverka, 938 N.W.2d 197, 204 (Iowa 2020)

River Excursions, Inc. v. City of Davenport, 359 N.W.2d 475, 478 (Iowa 1984)

Walters v. State, No. 12-2022, 2014 WL 69589, at *4–6 (Iowa Ct. App. Jan. 9, 2014)

State v. Treptow, 960 N.W.2d 98, 109 (Iowa 2021)

The district court erred in denying Scullark's motion to suppress, because the warrantless police search was conducted in violation of the Fourth Amendment to the United States Constitution and Article I, section 8 of the Iowa Constitution.

Authorities

State v. Lovig, 675 N.W.2d 557, 562 (Iowa 2004)

State v. Pals, 805 N.W.2d 767, 771 (Iowa 2011)

State v. Breuer, 577 N.W.2d 41, 44 (Iowa 1998)

U.S. Const. amend. IV

Iowa Const. art. I, § 8

State v. Watts, 801 N.W.2d 845, 850 (Iowa 2011)

Arizona v. Gant, 556 U.S. 332, 338 (2009)

United States v. Robinson, 414 U.S. 218, 230–234 (1973)

Chimel v. California, 395 U.S. 752, 763 (1969)

State v. Gaskins, 866 N.W.2d 1, 16 (Iowa 2015)

State v. Short, 851 N.W.2d 474, 507 (Iowa 2015)

State v. Baldon, 829 N.W.2d 785, 803 (Iowa 2013)

State v. Ochoa, 792 N.W.2d 260, 291 (Iowa 2010)

A. The search incident to arrest exception does not apply because Scullark could not access the bag when officers searched it.

Authorities

State v. Gaskins, 866 N.W.2d 1, 16 (Iowa 2015)

State v. Allen, No. 06-1770, 2007 WL 2964316
(Iowa Ct. App. Oct. 12, 2007)

State v. Jones, No. 02-1972, 2003 WL 22699655
(Iowa Ct. App. Nov. 17, 2003)

State v. Saxton, No. 14-0124, 2014 WL 7343522
(Iowa Ct. App. Dec. 24, 2014)

B. The search incident to arrest exception does not apply because the State failed to establish officers were looking for a weapon or for evidence of the offense of the arrest.

Authorities

Arizona v. Gant, 556 U.S. 332, 339 (2009)

Chimel v. California, 395 U.S. 752, 763 (1969)

State v. McGrane, 733 N.W.2d 671, 677 (Iowa 2007)

United States v. Graham, 638 F.2d 1111, 1114 (7th Cir. 1981)

State v. Gaskins, 866 N.W.2d 1, 14 (Iowa 2015)

Thornton v. United States, 541 U.S. 615, 624 (2004)

ROUTING STATEMENT

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

STATEMENT OF THE CASE

Nature of the Case

The defendant-appellant, Patrick Scullark Jr., appeals from his conviction, judgment, and sentence for possession of a controlled substance (methamphetamine) with intent to deliver, a class B felony, in violation of Iowa Code section 124.401(1)(b)(7), and failure to affix a drug tax stamp, a class D felony, in violation of Iowa Code section 453B.12.

Course of Proceedings

The State charged Scullark with possession of a controlled substance (methamphetamine) with intent to deliver and failure to affix a drug tax stamp by trial information filed September 8, 2022. (Trial Information, D0013) (App. pp. 4-6).

Scullark filed a written arraignment and plea of not guilty on September 13. (Written Arraignment, D0016) (App. pp. 7-8).

Scullark filed a motion to suppress on October 25, arguing police searched a fanny pack in violation of his rights under the Fourth Amendment to the United States Constitution and Article I, section 8 of the Iowa Constitution. (Motion to Suppress, D0018) (App. p. 9). The matter was heard on March 24, 2023. The district court denied the motion on April 20. (Order Denying Motion to Suppress, D0035) (App. pp. 10-13).

On July 20, Scullark entered a conditional guilty plea to all counts. (Plea Hrg. Tr. p. 14 L. 7–p. 16 L. 18). The State consented to Scullark retaining the right to challenge the suppression ruling on appeal despite his guilty plea. (Plea Hrg. Tr. p. 4 L. 3–6).

The district court imposed sentence on the same day as Scullark's plea. The court sentenced Scullark to a term of incarceration in count 1 not to exceed 25 years, with a one-

third minimum term which was reduced by one-third due to Scullark's guilty plea and further reduced by one-half pursuant to Iowa Code section 124.413, and a fine of $5,000 plus 15% surcharge. (7/20/2023 Hearing Tr. p. 20 L. 12–19, L. 23–25). The court imposed a term of incarceration in count 2 not to exceed five years, concurrent to the term in count 1, and a fine of $1,025 plus 15% surcharge; this fine was suspended. (7/20/2023 Hearing Tr. p. 20 L. 20–22, p. 21 L. 1–3). The court filed an order of disposition the same day. (Order of Disposition, D0047) (App. pp. 14-18).

Scullark filed a notice of appeal on August 2. (Notice of Appeal, D0050) (App. p. 19).

Facts

Waterloo Police Officer Jacob Bolstad was looking for Scullark due to an assault complaint. (Suppression Hrg. Tr. p. 4 L. 22–p. 6 L. 13). When Bolstad located Scullark at a residence, Scullark was wearing a fanny pack. (Suppression Hrg. Tr. p. 9 L. 17–20). When Bolstad began arresting

Scullark, Scullark handed another person present the fanny pack and then was placed in handcuffs as he tried to hand her other items. (Suppression Hrg. Tr. p. 10 L. 12–18, p. 11 L. 9–21).

Bolstad told Scullark "all the stuff you're handing her, I'm searching, just so you know." (Body Cam Video at 19:56:39–19:56:44). He picked up the fanny pack from where the woman had placed it. (Body Cam Video at 19:57:41–19:57:44). He asked Scullark if he wanted any of the items, and Scullark told him not to go through his belongings; Bolstad responded "it was on you when I arrested you . . . so I'm going through it." (Body Cam Video at 19:57:45–19:57:55). Bolstad eventually handed the bag to another officer who searched it and located methamphetamine. (Body Cam Video at 19:58:11–19:58:15; 20:02:15). At the time of the search Scullark's hands were still handcuffed behind his back, and he had been placed in the backseat of a squad car. (Body Cam Video at 20:02:13–20:02:15).

Scullark admitted he knowingly possessed more than five grams but less than five kilograms of methamphetamine with the intent to deliver, and that he knowingly possessed more than seven grams of methamphetamine without affixing a drug tax stamp. (Plea Hrg. Tr. p. 15 L. 4–p. 16 L. 2).

Jurisdictional Statement

Scullark entered a conditional guilty plea as permitted by Iowa Rule of Criminal Procedure 2.8(2)(b)(9) and Iowa Code section 814.6(3). See Iowa R. Crim. P. 2.8(2)(b)(9); Iowa Code § 814.6(3). Section 814.6(3) permits a right of direct appeal from a conditional guilty plea entered "with the consent of the prosecuting attorney and the defendant or defendant's counsel" if "appellate adjudication of the reserved issue is in the interest of justice." Iowa Code § 814.6(3).

Scullark, his attorney, and the prosecutor all consented to Scullark being able to challenge the suppression ruling on appeal. (Plea Hrg. Tr. p. 3 L. 11–p. 4 L. 6). Because the phrase "interest of justice" is not defined by the legislature, its

common meaning should be applied; dictionary definitions can be useful for discerning common meaning. See State v. Damme, 944 N.W.2d 98, 104 (Iowa 2020) (citations omitted). *Black's Law Dictionary* defines the phrase "interests of justice" as "[t]he proper view of what is fair and right in a matter in which the decision-maker has been granted discretion." *Interests of Justice*, *Black's Law Dictionary* (11th ed. 2019). Additionally, "interest of justice" as the term is used in other contexts generally means the request or action at issue serves the purposes of the statutory scheme which contains the phrase. See e.g. State v. Veverka, 938 N.W.2d 197, 204 (Iowa 2020) (interpreting a prior version of Iowa Rule of Evidence 5.807, dealing with the residual hearsay exception); River Excursions, Inc. v. City of Davenport, 359 N.W.2d 475, 478 (Iowa 1984) (interpreting a prior version of Iowa Rule of Appellate Procedure 6.104, dealing with interlocutory appeals); Walters v. State, No. 12-2022, 2014 WL 69589, at *4–6 (Iowa Ct. App. Jan. 9, 2014) (unpublished table decision)

(interpreting Iowa Code section 822.2(1)(d), dealing with postconviction relief).

Principles of fairness weigh in favor of appellate adjudication of this issue, and appellate adjudication of the issue serves the purposes of the "good cause" scheme of section 814.6. First, the motion to suppress involves one of our core constitutional protections: the protection against unreasonable searches. Correct resolution of a constitutional question is of significant interest to not only Scullark, but to all Iowans. This is especially pressing here, because the district court failed to apply binding constitutional precedent. Second, Scullark has no other avenue to pursue relief. Because the issue was raised in the district court, Scullark cannot pursue postconviction relief through a claim of ineffective assistance of counsel; direct appeal is the only way for him to vindicate his constitutional right. Third, appellate review serves the general purpose of the good cause requirement of section 814.6, because an appellate court can

provide the relief Scullark seeks. See State v. Treptow, 960 N.W.2d 98, 109 (Iowa 2021) ("good cause" means "a legally sufficient reason," which in turn means "a reason that would allow a court to provide some relief."). Scullark has fulfilled the requirements of section 814.6(3), and the Court should review his claim on the merits.

ARGUMENT

The district court erred in denying Scullark's motion to suppress, because the warrantless police search was conducted in violation of the Fourth Amendment to the United States Constitution and Article I, section 8 of the Iowa Constitution.

Preservation of Error

Scullark filed a motion to suppress challenging the search of the bag, which was denied. (Motion to Suppress, D0018; Order Denying Motion to Suppress, D0035) (App. pp. 9-13). Error was preserved. State v. Lovig, 675 N.W.2d 557,

562 (Iowa 2004) (adverse ruling on motion to suppress preserves error).

Standard of Review

The district court's denial of a motion to suppress alleging a constitutional violation is reviewed de novo. State v. Pals, 805 N.W.2d 767, 771 (Iowa 2011). The Court will make an independent evaluation of the totality of the circumstances as shown by the entire record. State v. Breuer, 577 N.W.2d 41, 44 (Iowa 1998).

Discussion

The district court determined the warrantless search of Scullark's fanny pack was permissible under the search incident to arrest exception to the warrant requirement. (Order Denying Motion to Suppress, D0035 p. 3) (App. pp. 10-13). That conclusion is incorrect because the bag was not accessible by Scullark at the time it was searched, and because the State failed to establish the search was for either a weapon or evidence of the offense of arrest.

The Fourth Amendment to the United States Constitution and Article I, section 8 of the Iowa Constitution both protect against unreasonable government searches. U.S. Const. amend. IV; Iowa Const. art. I, § 8. A warrantless search is per se unreasonable and unconstitutional unless an exception to the warrant requirement applies. State v. Watts, 801 N.W.2d 845, 850 (Iowa 2011) (citations omitted). The State bears the burden of establishing an exception applies. Id.

One exception to the warrant requirement is known as a search incident to arrest. The search incident to arrest exception "derives from interests in officer safety and evidence preservation that are typically implicated in arrest situations." Arizona v. Gant, 556 U.S. 332, 338 (2009) (citing United States v. Robinson, 414 U.S. 218, 230–234 (1973); Chimel v. California, 395 U.S. 752, 763 (1969)). Broadly stated, the exception allows police to search an arrestee and the area within his immediate control without a warrant in order to serve the "purposes of protecting arresting officers and

safeguarding any evidence of the offense of arrest that an arrestee might conceal or destroy." Id. at 339 (citing Chimel, 395 U.S. at 763).

The search incident to arrest exception is narrower under the Iowa Constitution than the United States Constitution. The United States Supreme Court has held the exception applies under the Fourth Amendment if it is reasonable to believe the area to be searched "contains evidence of the offense of arrest" even if it is no longer possible for the arrestee to access that area.[1] Gant, 556 U.S. at 351. The Iowa Supreme Court has rejected that approach under Article I, section 8, holding instead that a search incident to arrest for evidence is impermissible where, at the time of the search, it was impossible for the arrestee to access the searched area. State v. Gaskins, 866 N.W.2d 1, 16 (Iowa 2015). Extending the search incident to arrest exception to such circumstances

[1] However, the Gant Court held a search incident to arrest for officer safety purposes is impermissible under the Fourth Amendment if the container is not accessible by the arrestee. Gant, 556 U.S. at 346–47.

is not tethered to the exception's core purposes of protecting officer safety and preventing destruction of evidence of the offense of arrest by the arrestee. Id. at 13–14. Instead, allowing a search incident to arrest where the arrestee cannot access the area "would serve no purpose except to provide a police entitlement." Id. at 13 (quoting Gant, 556 U.S. at 347). "Police entitlements are incompatible with Iowans' robust privacy rights." Id. (citing State v. Short, 851 N.W.2d 474, 507 (Iowa 2015) (Cady, C.J., concurring specially); State v. Baldon, 829 N.W.2d 785, 803 (Iowa 2013); State v. Pals, 805 N.W.2d 767, 782–83 (Iowa 2011); State v. Ochoa, 792 N.W.2d 260, 291 (Iowa 2010)).

A. The search incident to arrest exception does not apply because Scullark could not access the bag when officers searched it.

During the suppression hearing, Bolstad acknowledged Scullark did not reach for the bag when he was handcuffed, and "couldn't have gotten it if he wanted to." (Suppression Hrg. Tr. p. 15 L. 19–25). He also acknowledged that at the

time of the search, Scullark was being loaded into Bolstad's squad car with other officers nearby. (Suppression Hrg. Tr. p. 16 L. 1–13). Bolstad's testimony is confirmed by his body camera footage. (Body Cam Video at 20:02:13–20:02:15). To establish the search incident to arrest exception applied under the Iowa Constitution, the State was required to show Scullark could have accessed the bag at the time it was searched. Gaskins, 866 N.W.2d at 16. The evidence affirmatively established he could not. This is identical to the unconstitutional search in Gaskins, where "[t]he officer who performed the search testified there was no way Gaskins could have retrieved anything from the locked safe while in custody in the squad car." Id. at 14. Because that is the case, applying the search incident to arrest exception serves no purpose aside from police entitlement. Id. at 13.

Defense counsel cited Gaskins during the hearing, noting its rejection of the "evidence-gathering rationale" permitted under the United States Constitution. (Suppression Hrg. Tr.

p. 22 L. 11–p. 23 L. 10). Counsel pointed out Bolstad's acknowledgement Scullark could not access the bag when it was searched. (Suppression Hrg. Tr. p. 22 L. 11–16).

In light of that argument, the district court's statement "the defense does not provide any argument or basis to distinguish between the federal and state constitution" was incorrect. (Order Denying Motion to Suppress, D0035 p. 2) (App. p. 11). The court did not acknowledge Gaskins at all, and instead relied entirely upon pre-Gaskins cases which did not apply the current analysis under the Iowa Constitution. For instance, the court relied on two unpublished Court of Appeals decisions, one from 2007 and one from 2003. (Order Denying Motion to Suppress, D0035 pp. 2–3) (App. pp. 11-12) (citing State v. Allen, No. 06-1770, 2007 WL 2964316 (Iowa Ct. App. Oct. 12, 2007) (unpublished table decision); State v. Jones, No. 02-1972, 2003 WL 22699655 (Iowa Ct. App. Nov. 17, 2003) (unpublished table decision)). Both cases involved searches of backpacks which were inaccessible to the

defendant at the time of the search, and were affirmed on then-existing precedent. Allen, 2007 WL 2964316, at *3–4; Jones, 2003 WL 22699655 at *1. Both would come out differently today, because today Gaskins controls the analysis under the Iowa Constitution.

The same is true of State v. Saxton, the case relied upon by the district court in rejecting Scullark's ability-to-access argument. (Order Denying Motion to Suppress, D0035 p. 3) (App. p. 12) (citing State v. Saxton, No. 14-0124, 2014 WL 7343522 (Iowa Ct. App. Dec. 24, 2014) (unpublished table decision)). Saxton approved a search of a backpack which was not accessible to the arrestee, and noted the search was permissible because it "was contemporaneous with the arrest." Saxton, 2014 WL 7343522 at *2. But like all of the cases cited by the district court, Saxton pre-dates Gaskins, and would have come out differently under the currently-controlling precedent. Accessibility, not merely contemporaneity, is the defining characteristic of the search

incident to arrest exception under the Iowa Constitution. The district court erred in failing to recognize this distinction.

B. The search incident to arrest exception does not apply because the State failed to establish officers were looking for a weapon or for evidence of the offense of the arrest.

The district court also erred in denying Scullark's motion to suppress because the State failed to establish officers were searching for either a weapon or evidence of the offense of arrest. Those are the only permissible purposes of a search incident to arrest, whether under the United States or Iowa Constitution. Gant, 556 U.S. at 339 ("That limitation, which continues to define the boundaries of the exception, ensures that the scope of a search incident to arrest is commensurate with its purposes of protecting arresting officers and safeguarding any evidence of the offense of arrest that an arrestee might conceal or destroy.") (citing Chimel, 395 U.S. at 763); State v. McGrane, 733 N.W.2d 671, 677 (Iowa 2007) ("The search-incident-to-arrest exception must be narrowly construed and limited to accommodating only those interests

it was created to serve.") (citing United States v. Graham, 638 F.2d 1111, 1114 (7th Cir. 1981)).

The record contains no explanation why officers wanted to search the fanny pack. Bolstad testified it was capable of concealing a variety of items, including weapons, but he did not say he was concerned it might actually contain a weapon or evidence of the offense of arrest. (Hearing Tr. p. 9 L. 21–p. 10 L. 11). The body camera video also provides no insight into the goal of the search; when Scullark handed off the bag, Bolstad immediately said he was going to search it, but not for what. (Body Cam Video at 19:56:39–19:56:44). Bolstad told Scullark he could search the bag because it was on Scullark when he was arrested, but again did not say what he would be looking for. (Body Cam Video at 19:57:45–19:57:55).

Bolstad's broad testimony that the fanny pack was large enough to possibly contain a weapon—which is true of nearly any container, and certainly any bag a person would carry—is insufficient to establish the search was addressing officer

safety concerns. Under both the Fourth Amendment and Article I, section 8, a search incident to arrest for weapons may only occur if the container is accessible by the arrestee. Gant, 556 U.S. at 351 ("Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest."); Gaskins, 866 N.W.2d at 14. Because it was definitively established Scullark could not access the bag when it was searched, there can be no valid officer-safety search incident to arrest under either the Fourth Amendment or Article I, section 8.

The State also failed to establish officers were looking for evidence of the offense of arrest. The State produced no evidence that purpose motivated the search. Because the offense of arrest was an assault at another location, it is not clear what evidence of that offense the bag could have

contained. The United States Supreme Court has rejected searches untethered to the offense of arrest:

> A rule that gives police the power to conduct such a search whenever an individual is caught committing a traffic offense, when there is no basis for believing evidence of the offense might be found in the vehicle, creates a serious and recurring threat to the privacy of countless individuals. Indeed, the character of that threat implicates the central concern underlying the Fourth Amendment—the concern about giving police officers unbridled discretion to rummage at will among a person's private effects.

Gant, 556 U.S. at 345. This principle was violated here, because the State failed to establish officers were looking for evidence of the offense of arrest, or for anything in particular at all.

It was the State's burden to establish the search incident to arrest exception applied; its failure to establish officers were searching for a weapon or evidence of the offense of arrest means it did not carry that burden. Officers searched the fanny pack when Scullark could not access it and with no specific goal, demonstrating a sense of sheer police entitlement to examine Scullark's belongings simply because he was

arrested. See Thornton v. United States, 541 U.S. 615, 624 (2004) (O'Connor, J., concurring in part); id. at 627 (Scalia, J., concurring in judgment); Gant, 556 U.S. at 347; Gaskins, 866 N.W.2d at 13. The district court erred in denying Scullark's motion to suppress.

Conclusion

The district court erred in denying Scullark's motion to suppress. Scullark could not access the bag when officers searched it, and the State failed to establish officers were looking for a weapon or evidence of the crime of arrest. Scullark's conviction should be vacated, all evidence stemming from the unconstitutional search be ordered suppressed, and the case remanded for further proceedings.

REQUEST FOR ORAL ARGUMENT

Counsel requests to be heard in oral argument.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $1.86, 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 BRIEFS

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) because:

> [X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 3,284 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

______________________________ Dated: *2/2/24*

Josh Irwin
Assistant Appellate Defender
Appellate Defender Office
6200 Park Avenue
Des Moines, IA 50321
(515) 281-8841
jirwin@spd.state.ia.us
appellatedefender@spd.state.ia.us

JI/lr/02/24 Filed: *2/12/24*