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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 HONORALBE LINDA M. FANGMAN, JUDGE

APPELLANT'S REPLY BRIEF AND ARGUMENT

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

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

Arizona v. Gant, 556 U.S. 332, 346–47 (2009)

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

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State v. Schiebout, No. 18-1662, 2019 WL 4309062, at *1 (Iowa Ct. App. Sept. 11, 2009)

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Int. of R.G., No. 21-0337, 2022 WL 468720, at *5 (Iowa Ct. App. Feb. 16, 2022)

State v. Simmons, 714 N.W.2d 264, 272–74 (Iowa 2006)

State v. Freeman, 705 N.W.2d 293, 297 (Iowa 2005)

STATEMENT OF THE CASE

COMES NOW the Defendant-Appellant, pursuant to Iowa R. App. P. 6.903(4), and hereby submits the following argument in reply to the State's proof brief filed on or about January 29, 2024. While the defendant's brief adequately addresses the issues presented for review, a short reply is necessary to address certain contentions raised by the State.

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.

State v. Gaskins did not change search incident to arrest analysis with regard to officer-safety searches; those were already forbidden by the Fourth Amendment if the arrestee could not access the area to be searched. Arizona v. Gant, 556 U.S. 332, 346–47 (2009). But Gaskins did—expressly—reject the evidentiary justification in circumstances where the arrestee could not access the area at the time of the search. State v. Gaskins, 866 N.W.2d 1, 16 (Iowa 2015). That change

would have altered the outcome of all of the cases relied on by the district court. It was erroneous for the court to rely entirely on abrogated caselaw.[1] See (Order Denying Motion to Suppress, D0035) (App. pp. 10-13).

State v. Schiebout involved unique, distinguishable circumstances. In Schiebout, although the officers initially seized a purse without a warrant, the search was conducted later, pursuant to a warrant issued because a narcotics dog gave a positive indication. State v. Schiebout, No. 18-1662, 2019 WL 4309062, at *1 (Iowa Ct. App. Sept. 11, 2009). The Court of Appeals questioned whether the search incident to arrest exception was necessary at all, because Schiebout "abandoned" the purse by placing it on the ground in public and walking away. Id. at *1 n. 1.

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[1] That further review was denied in State v. Saxton after Gaskins was decided adds nothing to the State's argument. See Iowa Ct. R. 21.27(3) ("Denial of further review shall have no precedential value.").

Differences aside, Schiebout held a proper seizure incident to arrest occurred even though the defendant could not access the bag when it was seized. That holding is in conflict with Gaskins, which held the exception cannot apply if the arrestee cannot access the item.[2] Gaskins, 866 N.W.2d at 16. Additionally, Schiebout focused on the possibility the seized bag contained "contraband." Schiebout, 2019 WL 4309062, at *2–3. The SITA exception is not a blanket justification to search for contraband, but rather addresses either officer safety risks or danger of destruction of "evidence of the offense of arrest by the arrestee." See Gant, 556 U.S. at 345 (allowing searches under the exception which are untethered to the offense of arrest "implicates the central concern underlying the Fourth Amendment—the concern about giving police officers unbridled discretion to rummage at

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[2] Schiebout quoted a portion of Gaskins which stated that case was not disavowing the search/seizure incident to arrest exception entirely. Schiebout, 2019 WL 4309062, at *2. Gaskins did not abandon the exception, but it did hold circumstances such as those in Schiebout and in the present case cannot justify its application.

will among a person's private effects.”). Schiebout was arrested pursuant to a warrant; the State’s brief in that case reveals the warrant was for failure to appear. See Appellee’s Brief at p. 5, State v. Schiebout, No. 18-1662, 2019 WL 4309062 (Iowa Ct. App. Sept. 11, 2009). Failure to appear cannot possibly generate physical evidence at risk of being destroyed by the arrestee. Concerns about “contraband” unrelated to the arrest are addressed by officers’ ability to obtain a search warrant if they believe probable cause exists to search. See Iowa Code § 808.3. The SITA exception is not intended as a method to bypass the probable cause requirement to search for items, even those which are illegal to possess, which are unrelated to the arrest. The potential abuse of such an approach is demonstrated by the case, where there was no independent probable cause which would support searching the bag and the items discovered had nothing to do with the arrest.

Schiebout applied the SITA exception where the arrestee could not access the bag, and the bag could not have contained evidence of the offense of arrest. Application of the exception to those circumstances serves nothing except police entitlement, an approach which has been rejected by both the Iowa Supreme Court and the United States Supreme Court. 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. Schiebout should be overruled, or at minimum should not be applied to this case because it is non-binding authority. See Iowa R. App. P. 6.904(2)(c) ("Unpublished opinions or decisions shall not constitute controlling legal authority."); Int. of R.G., No. 21-0337, 2022 WL 468720, at *5 (Iowa Ct. App. Feb. 16, 2022) (unpublished table decision) (the Court of Appeals "strive[s] for consistency in [its] decisions" but is not bound by its own prior unpublished opinions).

Finally, it is not clear that the presence of the search incident to arrest justifications is evaluated without regard to the officer's subjective view of the situation. Schiebout stated it is not, because "our law is clear that the legality of a search or seizure 'does not depend on the actual motivations of the police officers involved.'" Schiebout, 2019 WL 4309062, at *3. Schiebout quoted State v. Simmons for this proposition. While Simmons did use that broad language, it involved an exigent-circumstances search, not a search incident to arrest. State v. Simmons, 714 N.W.2d 264, 272–74 (Iowa 2006). Simmons cited State v. Freeman for the assertion; while Freeman did involve a search incident to arrest, the analysis centered on whether probable cause existed for that arrest (which is evaluated on an objective basis), not whether the justifications for a search incident to arrest were present. See State v. Freeman, 705 N.W.2d 293, 297 (Iowa 2005). Scullark acknowledges cases have stated in broad terms that officers' actions are to be reviewed on an objective basis. However,

that view is typically expressed as part of a probable cause or reasonable suspicion evaluation. Scullark is unaware of any binding precedent applying that principle to the question whether a search was motivated by the only two valid justifications for a search incident to arrest: officer safety concerns, or concerns the arrestee might obtain and destroy evidence of the offense of arrest.

In any event, whether evaluated objectively or subjectively, the State failed to establish one of those two justifications were present at the time of the search. Scullark was handcuffed in the back of a squad car. (Body Cam Video at 20:02:13–20:02:15). There was no officer safety risk or danger of destruction of evidence of the offense of arrest posed by him at the time of the search. Nor was there any reason to believe the bag contained evidence of the offense of arrest, which was an assault at a different location. See (Suppression Hrg. Tr. p. 4 L. 22–p. 6 L. 13). This conclusion is not altered by the presence of third parties; if neither SITA justification

existed, it is of no significance that a third party could access the contents of the bag. The State does not suggest one of the bystanders posed an officer safety risk (aside from the broad assertion the bag "could" have contained a weapon, which is insufficient standing alone to establish a valid safety concern because it is true of all containers), and the officer's body camera video confirms they did not. While the bystanders criticized some of the officer's actions, they were compliant with all commands and did not imply in any way that they intended to harm police.

Because there was no danger to the officers and no reason to believe the bag contained evidence of the offense of arrest, the State failed to establish this was a valid search incident to arrest.

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 offense 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.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was $0.00, and that amount has been paid in full by the Office of the Appellate Defender.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS, TYPEFACE REQUIREMENTS AND TYPE-STYLE REQUIREMENTS

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 1,403 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: 2/12/24

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